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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

FINAL DECISION LETTER

PROPOSED RULES

CPA Examiners

Environment, Health, and Natural Resources

Human Resources

Midwifery Joint Committee

Nursing, Board of

State Personnel

ARRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

ISSUE DATE: NOVEMBER 1, 1990

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
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04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
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12/16/91	11/21/91	12/02/91	01/15/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:GS:TCR:rac
DJ 166-012-3
AI049-055
AK255

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

September 24, 1990

DeWitt F. McCarley, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to seven annexations [Ordinance Nos. 2185 and 2192 through 2197 (1990)] and the designation of the annexed areas to districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 26, 1990.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Medical Care Commission intends to amend 10 NCAC 3C .1901 - .1905, .1910, .1912, .1915 - .1916, .1918, .1922, .1926; 311 .0108, .0315, .0505, .0507, .0510 - .0511, .0709, .1501, .1612; repeal rule(s) cited as 10 NCAC 3C .1913 - .1914; 311 .0107, .0508 - .0509; and adopt rule(s) cited as 10 NCAC 311 .0711, .1107 - .1109.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 9:30 a.m. on December 7, 1990 at the Division of Facility Services, Hearing Room 201, 701 Barbour Drive (D. Dix Hospital Campus), Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning the rules should be submitted as soon as possible but no later than December 7, 1990 to Lynda McDaniel, 701 Barbour Drive, Raleigh, North Carolina 27603. Oral comments may be presented at the hearing.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3C - LICENSING OF HOSPITALS

SECTION .1900 - SUPPLEMENTAL RULES FOR THE LICENSURE OF THE SKILLED: INTERMEDIATE: DOMICILIARY BEDS IN A HOSPITAL

.1901 SUPPLEMENTAL RULES

When a hospital offers ~~skilled~~ nursing facility ~~intermediate~~ or domiciliary home care as part of its long term care services, the services shall be included under one hospital license as provided in Rule .0201(c). The general requirements included in this Subchapter shall apply when applicable but in addition the ~~skilled~~ nursing ~~intermediate~~ facility care and domiciliary home care unit must meet the supplemental requirements of this Section.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1902 DEFINITIONS

The following definitions shall apply throughout this Section, unless text otherwise clearly indicates to the contrary:

- (1) "Accident" means something occurring by chance or without intention which has caused physical or mental harm to a patient, resident or employee.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.
- (3) "Administrator" means the person who has authority for and is responsible to the governing board for the overall operation of a facility.
- (4) "Capacity" means the maximum number of patient or resident beds which the facility is licensed to maintain at any given time. This number shall be determined as follows:
 - (a) Bedrooms shall have minimum square footage of 100 square feet for a single bedroom and 80 square feet per patient or resident in multi-bedded rooms. This minimum square footage shall not include space in toilet rooms, washrooms, closets, vestibules, corridors, and built-in furniture.
 - (b) Dining, recreation and common use areas available shall total no less than 25 square feet per bed for skilled nursing and ~~intermediate~~ care beds and no less than 30 square feet per bed for domiciliary home beds. Such space must be contiguous to patient and resident bedrooms.
- (5) "Combination Facility" means ~~any hospital with nursing home beds which is licensed to provide more than one level of care such as a combination of intermediate care and or skilled nursing care and domiciliary home care.~~ a "combination home" as defined in the Nursing Home Licensure Act G.S. 131E-101 (1).
- (6) "Commission" means the North Carolina Medical Care Commission unless otherwise specified.
- (7) "Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (8) "Department" means the North Carolina Department of Human Resources.
- (9) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.
- (10) "Dispense" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by state and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".

- (11) "Domiciliary Home" means any facility by whatever name it is called and regardless of size which provides care for aged or disabled persons whose principal need is a home with the sheltered or personal care their age or disability requires. Medical care for any domiciliary home resident is only occasional or incidental such as may be required in the home of any individual or family, but the resident is supervised in the administration of his medications.
- (12) "Drug" means substances:
 - (a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
 - (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
 - (d) intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph; but does not include devices or their components, parts, or accessories.
- (13) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (14) "Existing Facility" means a licensed facility; or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the preliminary working drawings stage prior to the effective date of this Rule.
- (15) "Exit Conference" means the conference held at the end of a survey, inspection or investigation, but prior to finalizing the same, between the Department's representatives who conducted the survey, inspection or investigation and the facility administration representative(s).
- (16) "Incident" means an intentional or unintentional action, occurrence or happening which is likely to cause or lead to physical or mental harm to a patient, resident or employee.
- (17) ~~"Intermediate Care Facility (ICF)" means a facility or portion thereof, however named, which is advertised, announced or maintained for the express or implied purpose of providing intermediate nursing care or convalescent care for three or more person unrelated to the licensee.~~
- (18) ~~"Intermediate Nursing" means that level of service which provides for counseling, teaching, and implementing prescribed treatment in an intermediate care facility. It is ministering to, assisting with and maintaining observant continuous care to the chronically ill in a stable condition and includes administering medications; providing supportive and restorative nursing procedures to those who can benefit from such services; assisting with activities of daily living; maintaining Foley catheters, colostomies and ileostomies; and providing for any other condition which requires the direction and supervision of services by a licensed physician and provision of services by duly licensed nursing personnel or by trained non-licensed personnel under the supervision of a duly licensed nurse.~~
- (19) ~~(19) "Licensed Practical Nurse" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.~~
- (20) ~~(20) "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.~~
- (21) ~~(21) "Medication" means drug as defined in (12) of this Rule.~~
- (22) ~~(22) "New Facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than one half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.~~
- (23) ~~(23) "Nurse Aide" means any unlicensed male or female person regardless of working title employed or assigned in a facility for the purpose of assisting duly licensed nurses with patient care or providing patient care under the supervision or direction of duly licensed nurses, who is qualified to provide nursing care under the supervision of a licensed nurse and is registered as a nurse aide in a nurse aide registry approved by the Department.~~
- (24) ~~"Nurse Aide Trainee" means an individual in training to become a nurse aide.~~
- (25) ~~"Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing home" which is the usual prerequisite level of state~~

licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.

- (24) "Nurse in Charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (25) "On Duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.
- (26) "Patient" means any person admitted for care to a skilled nursing or intermediate care facility.
- (27) "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (28) "Qualified Dietitian" means a person who meets the standards and qualification established by the Committee on Professional Registration of the American Dietetic Association.
- (29) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (30) "Resident" means any person admitted for care to a domiciliary home.
- (31) ~~"Skilled Nursing" means that level of service which provides for counseling, teaching and implementing prescribed treatment in a skilled nursing facility. It is ministering to, assisting with and maintaining observant continuous care to the chronically ill in a stable or unstable condition. Such service includes administering all medications including parenteral medications and intravenous fluids; providing supportive and restorative nursing procedures for those patients who can benefit from such services; maintaining any tubes indwelling in body cavities; administering oxygen or other medicinal gases on a regular basis to those patients in an unstable condition; and requiring direction or supervision of services by licensed physicians and delivery of services by licensed nursing personnel or trained non-licensed nursing personnel under the supervision of a licensed nurse 24 hours per day.~~
- (32) "Skilled Nursing Facility (SNF)" means a facility or a portion thereof, however named, which is advertised, announced or maintained for the express purpose of providing skilled nursing or convalescent care for three or more persons unrelated to the licensee. The primary need of the patients admitted

~~is skilled nursing care on a 24-hour basis and continuing medical supervision.~~

- (31) ~~"Sitter" means an individual employed to provide companionship and social interaction to a particular resident or patient, usually on a private duty basis.~~
- (32) ~~(33) "Supervisor-in-Charge (skilled nursing)" "Supervisor-in-Charge" means a duly licensed nurse to whom supervisory duties have been delegated by the Director of Nursing.~~
- (34) ~~"Supervisor-in-Charge (intermediate care nursing)" means a duly licensed nurse for eight hours per day between the hours of 7:00 a.m. and 7:00 p.m. or, at other times, a non-licensed employee to whom duties have been delegated by the director of nursing.~~
- (33) ~~(35) "Supervisor-in-Charge (domiciliary care facility)" means any employee to whom supervisory duties for the domiciliary home portion of a combination facility have been delegated by either the administrator or director of nursing.~~

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1903 INSPECTIONS

(a) Any hospital with ~~nursing home~~ beds licensed by the Department under Section .1900 of these Rules may be inspected by one or more authorized representatives of the Department at any time. Generally, inspections will be conducted between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. However, complaint investigations shall be conducted at the most appropriate time for investigating allegations of the complaint.

(b) At the time of inspection, any authorized representatives of the Department shall make his presence known to the administrator or other person in charge who shall cooperate with such representative and facilitate the inspection.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1904 PROCEDURE FOR APPEAL

A hospital with nursing facility or domiciliary home beds may appeal any decision of the Department to deny, revoke or alter a license by making such an appeal in accordance with G.S. Chapter 150B.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1905 ADMISSIONS

(a) No patient shall be admitted except under the orders of a duly licensed physician.

(b) The facility shall acquire prior to or at the time of admission orders from the attending physician for the immediate care of the patient or resident.

(c) Within 48 hours of admission, the facility shall acquire medical information which shall include current medical findings, diagnosis, rehabilitation potential, a summary of the hospital stay if the patient is being transferred from a hospital, and orders for the ongoing care of the patient.

(d) If a patient is admitted from somewhere other than a hospital, a physical examination shall be performed either within 5 days prior to admission or within 48 hours following admission.

(e) Hospitals offering ~~skilled nursing facility intermediate nursing~~, or domiciliary home care as a new service must prepare a plan of admission which, at a minimum, assures availability of staff time and plans for individual patient assessments, initiation of health care or nursing care plans, and implementation of physician and nursing treatment plans. This plan must be available for inspection during the initial licensure survey prior to issuance of a license.

(f) Only person who are 18 years of age or older shall be admitted to domiciliary home beds in a facility.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1910 NURSING/HEALTH CARE

ADMINISTRATION AND SUPERVISION

(a) A licensed facility shall have a director of nursing service who shall be responsible for the overall organization and management of all nursing services in ~~skilled nursing and intermediate care~~ facilities and health care services in the domiciliary home portion of combination facilities and shall be currently licensed to practice as a registered nurse by the North Carolina Board of Nursing in accordance with G.S. 90, Article 9A.

(b) The director of nursing shall not be counted as meeting the requirements for both the Director of Nursing and patient and resident care staffing contained in Rules .1910, .1911 and .1912 of this Section.

(c) The Director of Nursing shall not serve as administrator or assistant administrator.

(d) A licensed facility with ~~(1) skilled nursing facilities or combination skilled nursing, intermediate care or domiciliary homes~~ shall provide a full-time director of nursing on duty at least eight hours per day, five days a week. A registered nurse shall relieve the Director of Nursing

(be in charge of nursing) during the Director's absence.

~~(2) intermediate care facilities or combination facilities shall provide a director of nursing on duty at least four hours per week. Either a licensed practical nurse or registered nurse shall be designated as in charge and shall be on duty in the intermediate care facility eight hours per day, seven days per week between the hours of 7:00 a.m. and 7:00 p.m. At all times when there is an absence of a registered or licensed practical nurse, there shall be a person in charge to whom duties have been delegated by the director of nursing.~~

(e) A licensed facility shall employ and assign registered nurses, and licensed practical nurses, and non-licensed staff nurse aides and nurse aide trainees for duties in accordance with G.S. 90, Article 9A. The Department shall refer possible violations of this statute to the North Carolina Board of Nursing for investigation.

(f) The Director of Nursing shall cause the following to be accomplished:

(1) establishment and implementation of nursing policies and procedures which shall include, but shall not be limited to the following:

(A) assessment of and planning for patients' nursing care or health care needs, and implementation of nursing or health care plans;

(B) daily charting of any unusual occurrences or acute episodes related to patient care, and progress notes written monthly ~~in SNFs and quarterly in ICFs~~ reporting each patient's performance in accordance with identified goals and objectives and each patient's progress toward rehabilitative nursing goals;

(C) assurance of the delivery of nursing services in accordance with physicians' orders, nursing care plans and the facility's policies and procedures;

(D) notification of emergency physicians or on-call physicians;

(E) infection control to prevent cross-infection among patients and staff;

(F) reporting of deaths;

(G) emergency reporting of fire, patient and staff accidents or incidents, or other emergency situations;

(H) use of protective devices or restraints to assure that each patient or resident is restrained in accordance with physician orders and the facility's policies, and that the restrained patient or resident is appropriately evaluated and released at a minimum of every two hours;

(I) special skin care and decubite care;

- (J) bowel and bladder training;
 - (K) maintenance of proper body alignment and restorative nursing care;
 - (L) supervision of and assisting patients with feeding;
 - (M) intake and output observation and reporting for those patients whose condition warrants monitoring of their fluid balance. This will include those patients on intravenous fluids, tube feedings, with kidney failure and temperatures elevated to 102 degrees Fahrenheit or above;
 - (N) catheter care; and
 - (O) procedures used in caring for patients in the facility;
- (2) development of written job descriptions for nursing personnel;
 - (3) periodic assessment of the nursing department with identification of personnel requirements as they relate to patient care needs and reporting same to the administrator;
 - (4) a planned orientation and continuing inservice education program for nursing employees and documentation of staff attendance and subject matter covered during inservice education programs;
 - (5) provision of appropriate reference materials for the nursing department, which includes a Physician's Desk Reference or comparable drug reference, policy and procedure manual, and medical dictionary for each nursing station; and
 - (6) establishment of operational procedures to assure that appropriate supplies and equipment are available to nursing staff as determined by individual patient care needs.

Authority: G.S. 131E-79; 42 U.S.C. 1396.

.1912 NURSE STAFFING REQUIREMENTS

(a) A licensed facility shall provide licensed nursing personnel sufficient to accomplish the following:

- (1) patient needs assessment,
- (2) patient care planning, and
- (3) supervisory functions in accordance with the level of patient or resident care advertised or offered by the facility.

The facility also shall provide other nursing personnel sufficient to assure that at least activities of daily living, personal grooming, restorative nursing actions and other health care needs as identified in each patient's or resident's plan of care are met.

(b) A licensed multi-storied facility (one having more than one story) shall provide at least one

person on duty on each patient care floor at all times.

(c) A hospital with skilled nursing services shall provide total staffing as required in Rules .1910, .1911 and .1913 of this Section.

(d) A hospital with intermediate care services shall provide in addition to the director of nursing, at least one licensed practical nurse on duty eight hours per day, seven days per week between the hours of 7:00 a.m. and 7:00 p.m. The total number of personnel to patient ratios shall meet total staffing requirements contained in Rules .1910, .1911 and .1913 of this Section.

(e) A licensed nurse shall be on duty for administering all medications except for those medications a physician has ordered in writing to be administered by the patient, resident or someone other than a licensed nurse and observing patient reaction to medications received.

(f) The number of total personnel on duty in addition to the director of nursing during a 24-hour period shall be at least 2.2 hours of care per patient day for skilled nursing facilities, 1.8 hours of care per patient day for intermediate care facilities, and .96 hours of care per resident day for domiciliary homes as indicated in the charts contained in Rules .1913, .1914 and .1915 of this Section. The total allocation per 24 hours shall not be less than indicated on charts contained in Rules .1913, .1914 and .1915 of this Section, except in emergencies such as hazardous driving conditions or epidemic illness among staff. However, allocations of personnel by shift must be evaluated by the director of nursing to assure that patients' and residents' health, safety and personal care needs are met. All exceptions to meeting minimum staffing requirements shall be reported in writing to the Department at the end of each month.

(g) All part-time staff shall meet personnel and training requirements contained in Rule .1918 of this Section.

(h) For purposes of determining compliance with the minimum staffing allowable, an employee shall work only eight hours a day in order to be counted as meeting the numerical requirements indicated in Rules .1913, .1914 and .1915 of this Section. An employee may be counted only for the hours worked and time actually spent in each portion of a hospital with nursing home services, i.e., skilled nursing, intermediate care, domiciliary home portions of the hospital.

(c) Daily direct patient care nursing staff, licensed and unlicensed, shall equal or exceed 2.1 nursing hours per patient. (This is sometimes referred to as nursing hours per patient day or NIIPPD or NII PD.)

- (1) The first shift shall equal or exceed .9 hour per patient.
- (2) The second shift shall equal or exceed .7 hour per patient.
- (3) The third shift shall equal or exceed .4 hours per patient.
- (4) A remaining balance of .1 hour per patient is to be used flexibly to meet the variable needs of each facility on any shift.
- (d) Registered and licensed practical nurses shall provide daily nursing care of at least .52 hour per patient.

- (1) The first shift shall provide at least .16 hour per patient:
 - (A) A registered nurse shall provide at least .12 hour per patient on first shift.
 - (B) The remaining .04 hour per patient may be either an RN or LPN;
- (2) The second shift shall provide at least .15 hour per patient. The requirements in Subparagraphs (d)(4) and (5) of this Rule shall be required even when higher than this minimum;
- (3) The third shift shall provide at least .15 hour per patient. The requirements in Subparagraphs (d)(4) and (5) of this Rule shall be required even when higher than this minimum;
- (4) Inclusive in these figures is the requirement that at least one licensed nurse is on duty for direct patient care at all time; and
- (5) Nursing care shall include the services of a registered nurse for at least eight consecutive hours a day, seven days a week. This coverage can be spread over more than one shift if such a need exists.

(e) Each facility shall determine its minimum allowable shift and daily staffing hours by multiplying the given NHPPD or shift value by the applicable census figure. Nursing support personnel including ward clerks, secretaries, nurse educators and persons in primarily administrative management positions and not actively involved in direct patient care shall not be counted toward compliance with minimum daily requirements for direct care staffing.

(f) All exceptions to meeting minimum staffing requirements shall be reported to the Department at the end of each month. Staffing waivers granted by the federal government for Medicare and Medicaid certified beds shall be accepted for licensure purposes.

(g) The ratio of male to female nurse aides will be determined by the needs of the patients, particularly the numbers of male patients requiring assistance with personal care.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1913 SKILLED NURSING CARE STAFFING REQUIREMENTS (REPEALED)

.1914 INTERMEDIATE NURSING CARE STAFFING REQUIREMENTS (REPEALED)

Statutory Authority G.S. 131E-79.

.1915 DOMICILIARY HOME PERSONNEL REQUIREMENTS

(a) The administrator shall designate a person to be in charge of the domiciliary home residents at all times. The nurse in charge of ~~skilled nursing services or intermediate care services~~ may also serve as supervisor-in-charge of the domiciliary home beds.

(b) If domiciliary home beds are located in a separate building or a separate level of the same building, there must be a person on duty in the domiciliary home areas at all times.

(c) A licensed facility shall provide sufficient staff to assure that activities of daily living, personal grooming, and assistance with eating are provided to each resident. Medication administration as indicated by each resident's condition or physician's orders shall be carried out as identified in each resident's plan of care.

(d) Domiciliary home services staffing requirements, in addition to general requirements described in Rules .1910, .1911 and .1912 of this Section, shall be as follows:

First Shift	Second Shift
One person to every 20 or fewer residents	One person to every 20 or fewer residents
Third Shift	
One person to every 50 or fewer residents	

Statutory Authority G.S. 131E-79; 42 U.S.C. 1396.

.1916 REHABILITATIVE NURSING AND DECUBITUS CARE

Each patient or resident shall be given care to prevent contractures, deformities, and decubiti, including but not limited to:

- (1) changing positions of bedfast and chairfast patients or residents every two hours and administering simple preventive care; documentation of such care and outcome must

be included in routine summaries or progress notes;

- (2) maintaining proper alignment and joint movement to prevent contractures and deformities, which must be documented in routine summaries or progress notes;
- (3) implementing an individualized bowel and bladder training program except for patients or residents whose records are documented that such training is not effective; a monthly summary for ~~SNF~~ patients and quarterly summaries for ~~ICF~~ patients and domiciliary residents shall be written relative to each patient's or resident's performance in the bowel and bladder training program; and
- (4) such other services as necessary to meet the needs of the patient.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1918 TRAINING

(a) A licensed facility shall provide for all patient or resident care employees a planned orientation and continuing education program emphasizing patient or resident assessment and planning, activities of daily living, personal grooming, rehabilitative nursing or restorative care, other patient or resident care policies and procedures, patients' rights, and staff performance expectations. Attendance and subject matter covered shall be documented for each session and available for licensure inspections.

(b) The administrator shall assure that each employee is oriented within the first week of employment to the facility's philosophy and goals.

(c) Each employee shall have specific on-the-job training as necessary for the employee to properly perform his individual job assignment.

(d) Unless otherwise prohibited, a nurse aide trainee may be employed to perform the duties of a nurse aide for a period of time not to exceed four months. During this period of time the nurse aide trainee shall be permitted to perform only those tasks for which minimum acceptable competence has been demonstrated and documented on a skills check-off record. Job applicants for nurse aide positions who were formerly qualified nurse aides but have not been gainfully employed as such for a period of 24 consecutive months or more shall be employed only as nurse aide trainees and must re-qualify as nurse aides within four months of hire.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1922 ACTIVITIES AND RECREATION

(f) A licensed facility shall display a monthly activities calendar which includes variety to appeal to different interest groups in the ~~skilled~~ nursing ~~intermediate~~ care and domiciliary home services.

Authority G.S. 131E-79; 42 U.S.C. 1396.

.1926 NURSING HOME PATIENT OR RESIDENT RIGHTS

(h) In matters of patient abuse, neglect or misappropriation the definitions shall have the meanings defined for abuse, neglect and exploitation respectively as contained in the North Carolina PROTECTION OF THE ABUSED, NEGLECTED OR EXPLOITED DISABLED ADULT ACT, G.S. 108A-99 et seq.

Authority G.S. 131E-79; 42 U.S.C. 1396.

SUBCHAPTER 3H - RULES FOR THE LICENSING OF NURSING HOMES

SECTION .0100 - GENERAL INFORMATION

.0107 TYPES OF FACILITIES (REPEALED)

Statutory Authority G.S. 131E-104.

.0108 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (2) "Adequate" means, when applied to various areas services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
- (3) "Administrator" means the person who has authority for and is responsible for the overall operation of a facility.
- (4) "Appropriate" means right for the specified use or purpose, suitable or proper when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.
- (5) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time. This number shall be determined as follows:
 - (a) Bedrooms shall have minimum square footage of 100 square feet for a single bedroom and 80 square feet per patient or resident in multi-bedded rooms. This minimum square footage shall not include

- space in toilet rooms, washrooms, closets, vestibules, corridors, and built-in furniture.
- (b) Dining, recreation and common use areas available shall total no less than 25 square feet per bed for ~~skilled nursing and intermediate~~ care beds and no less than 30 square feet per bed for domiciliary home beds.
- (6) "Combination Facility" means ~~any nursing home licensed to provide more than one level of care;~~ a combination home as defined in G.S. 131E-101. Facilities listed in Rule .0107(3) through .0107(6) are combination facilities.
- (7) "Commission" means the North Carolina Medical Care Commission unless otherwise specified.
- (8) "Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (9) "Department" means the North Carolina Department of Human Resources.
- (10) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.
- (11) "Drug" means substances:
- (a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
 - (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
 - (c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
 - (d) intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph; but does not include devices or their components, parts, or accessories.
- (12) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (13) "Existing Facility" means a licensed facility; or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department through the preliminary working drawings stage prior to the effective date of this Rule.
- (14) "Exit Conference" means the conference held at the end of a survey, inspection or investigation, but prior to finalizing the same, between the Department's representatives who conducted the survey, inspection or investigation and the facility administration representative.
- (15) "Incident" means an unplanned or unwanted event which has not caused a wound or injury to any individual but which has the potential for such should the event be repeated.
- (16) "~~Intermediate Care Facility (ICF)~~" means ~~a facility or portion thereof, however named, which is advertised, announced or maintained for the express or implied purpose of providing intermediate nursing care or convalescent care for three or more persons unrelated to the licensee.~~
- (17) "~~Intermediate Nursing~~" means ~~that level of service which provides for counseling, teaching, and implementing prescribed treatment in an intermediate care facility. It is ministering to, assisting with and maintaining observant continuous care to the chronically ill in a stable condition and includes administering medications; providing supportive and restorative nursing procedures to those who can benefit from such services; assisting with activities of daily living; maintaining foley catheters, colostomies and ileostomies; and providing for any other condition which requires the direction and supervision of services by a licensed physician and provision of services by duly licensed nursing personnel or by trained non-licensed nursing personnel under the supervision of a duly licensed nurse.~~
- (18) "~~Licensed Practical Nurse~~" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.
- (19) "~~Licensee~~" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.
- (20) "~~Life Care Center~~" means an institution, firm, association, organization, corporation, partnership, individual or other business which advertises to the public or provides continuing care to individuals for life including retirement, domiciliary, ~~intermediate care or skilled and nursing~~ care facilities, from the time of admission to the time of death. Such continuing care is furnished pursuant to a continuing care agreement and to individuals not related by consanguinity or affinity to the provider.
- (21) "~~Medication~~" means drug as defined in (11) of this Rule.
- (22) "~~New Facility~~" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according

to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.

- (24) (21) "Nurse Aide" means any ~~unlicensed male or female person regardless of working title employed or assigned in a facility for the purpose of assisting duly licensed nurses with patient care or providing patient care under the supervision or direction of duly licensed nurses~~ who is qualified to provide nursing care under the supervision of a licensed nurse and is registered as a nurse aide in a nurse aide registry approved by the Department.
- (22) "Nurse Aide Trainee" means an individual in training to become a nurse aide.
- (23) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing home" which is the usual prerequisite level of state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.
- (24) "Nurse in Charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (25) "On Duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.
- (26) "Operator" means the owner of the nursing home business.
- (27) "Patient" means any person admitted for nursing care. ~~to a skilled nursing or intermediate care facility.~~
- (28) "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules. It is applicable to new licensees who are not yet fully operable under the licensee's control or to licensees with serious compliance problems.
- (29) "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (30) "Qualified Dietitian" means a person who meets the standards and qualification established by the Commission on Dietetic Registration of the American Dietetic Association.

- (31) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (32) "Resident" means any person admitted for care to a domiciliary home part of a combination home as defined in G.S. 131E-101.
- (33) "Sitter" means an individual employed to provide companionship and social interaction to a particular patient, usually on a private duty basis.
- (33) "Skilled Nursing" means that level of service which provides for counseling, teaching and implementing prescribed treatment in a skilled nursing facility. It is ministering to, assisting with and maintaining observant continuous care to the chronically ill in a stable or unstable condition. Such service includes administering all medications including parenteral medications and intravenous fluids; providing supportive and restorative nursing procedures for those patients who can benefit from such services; maintaining any tubes indwelling in body cavities; administering oxygen or other medicinal gases on a regular basis in an unstable condition; and requiring direction or supervision of services by licensed physicians and delivery of services by licensed nursing personnel or trained non-licensed nursing personnel under the supervision of a licensed nurse 24 hours per day.
- (34) "Skilled Nursing Facility (SNF)" means a facility or a portion thereof, however named, which is advertised, announced or maintained for the express purpose of providing skilled nursing or convalescent care for three or more persons unrelated to the licensee. The primary need of the patients admitted is skilled nursing care on a 24-hour basis and continuing medical supervision.
- (35) "Supervisor in Charge (skilled nursing)" means a duly licensed nurse to whom supervisory duties have been delegated by the Director of Nursing.
- (36) "Supervisor in Charge (intermediate care nursing)" means a duly licensed nurse for eight hours per day between the hours of 7:00 a.m. and 7:00 p.m. or, at other times, a non-licensed employee to whom duties have been delegated by the Director of Nursing.
- (37) (34) "Supervisor-in-Charge (domiciliary care facility home)" means any employee to whom supervisory duties for the domiciliary home portion of a combination home facility have been delegated by either the Administrator or Director of Nursing.

Authority G.S. 131E-104; 42 U.S.C. 1396.

SECTION .0300 - GENERAL STANDARDS OF ADMINISTRATION

.0315 NURSING HOME PATIENT OR RESIDENT RIGHTS

(h) In matters of patient abuse, neglect or misappropriation the definitions shall have the meaning defined for abuse, neglect and exploitation respectively as contained in the North Carolina PROTECTION OF THE ABUSED, NEGLECTED OR EXPLOITED DISABLED ADULT ACT, G.S. 108A-99 et seq.

Authority G.S. 131E-104; 131E-124; 131E-129; 42 U.S.C. 1396.

SECTION .0500 - NURSING SERVICES

.0505 NURSING HEALTH CARE ADMINISTRATION AND SUPERVISION

(a) A licensed facility shall have a Director of Nursing service who shall be responsible for the overall organization and management of all nursing services in ~~skilled nursing and intermediate care facilities and health care services in the domiciliary home portion of combination facilities~~ and shall be currently licensed to practice as a registered nurse by the North Carolina Board of Nursing in accordance with G.S. 90, Article 9A.

(b) The Director of Nursing shall not be counted as meeting the requirements for both the Director of Nursing and patient and resident care staffing contained in Rules .0506 and .0507 ~~and .0508~~ of this Section.

(c) The Director of Nursing shall not serve as Administrator or Assistant Administrator.

(d) A licensed facility, ~~nursing home with:~~

- (1) ~~skilled nursing facilities or combination facilities with skilled nursing care~~ shall provide a fulltime Director of Nursing on duty at least eight hours per day, five days a week. A registered nurse shall relieve the Director of Nursing (be in charge of nursing) during the Director's absence;
- (2) ~~freestanding intermediate care facilities or combination intermediate care-domiciliary homes~~ shall provide a Director of Nursing on duty in the facility at least four hours per week. Either a licensed practical nurse or registered nurse shall be designated as in charge and shall be on duty in the intermediate care facility eight hours per day, seven days per week between the hours of 7:00 a.m. and 7:00 p.m. At all times when there is an absence of a registered or licensed practical nurse, there shall be a person in charge to

~~whom duties have been delegated by the Director of Nursing.~~

(e) A licensed facility shall employ and assign registered nurse, and licensed practical nurses and ~~non-licensed staff nurse aides~~ for duties in accordance with G.S. 90, Article 9A. ~~The Department shall refer possible violations of this statute to the North Carolina Board of Nursing for investigation.~~

(f) The Director of Nursing shall cause the following to be accomplished:

- (1) establishment and implementation of nursing policies and procedures which shall include but not be limited to the following:
 - (A) assessment of and planning for patients' nursing care or health care needs and implementation of nursing/health care plans;
 - (B) daily charting of any unusual occurrences or acute episodes related to patient care, and progress notes written monthly in SNFs and quarterly in ICFs reporting each patient's performance in accordance with identified goals and objectives and each patient's progress toward rehabilitative nursing goals;
 - (C) assurance of the delivery of nursing services in accordance with physicians' orders, nursing care plans and the facility's policies and procedures;
 - (D) notification of emergency physicians or on-call physicians;
 - (E) infection control to prevent cross-infection among patients and staff;
 - (F) reporting of deaths;
 - (G) emergency reporting of fire, patient or staff accidents or incidents, or other emergency situations;
- (II) use of protective devices or restraints to assure that each patient or resident is restrained in accordance with physician orders and the facility's policies, and that the restrained patient or resident is appropriately released and evaluated at a minimum of every 2 hours;
 - (I) special skin care and decubiti care;
 - (J) bowel and bladder training;
 - (K) maintenance of proper body alignment and restorative nursing care;
 - (L) supervision of and assisting patients with feeding;
 - (M) intake and output observation and reporting for those patients whose condition warrants monitoring of their fluid balance. This will include those patients on intravenous fluids, tube feedings, with kidney failure and temperatures elevated to 102°F. or above;

- (N) catheter care; and
- (O) procedures used in caring for patients in the facility;
- (2) development of written job descriptions for nursing personnel;
- (3) periodic assessment of the nursing Department with identification of personnel requirements as they relate to patient care needs and reporting same to the Administrator;
- (4) a planned orientation and continuing inservice education program for nursing employees and documentation of staff attendance and subject matter covered during inservice education programs;
- (5) obtainment and provision of appropriate reference materials for the nursing Department, which include a Physician's Desk Reference or comparable drug reference, policy and procedure manual, and medical dictionary for each nursing station; and
- (6) establishment of operational procedures to assure that appropriate supplies and equipment are available to nursing staff as determined by individual patient care needs.

Authority G.S. 131E-104; 42 U.S.C. 1396.

.0507 NURSE STAFFING REQUIREMENTS

(a) A licensed facility shall provide licensed nursing personnel sufficient to accomplish the following:

- (1) patient needs assessment,
- (2) patient care planning, and
- (3) supervisory functions in accordance with the levels of patient or resident care advertised or offered by the facility.

The facility also shall provide other nursing personnel sufficient to assure that at least activities of daily living, personal grooming, restorative nursing actions and other health care needs as identified in each patient's or resident's plan of care are met.

(b) A licensed multi-storied facility (one having more than one story) shall provide at least one person on duty on each patient care floor at all times.

(c) ~~A skilled nursing facility shall provide total staffing as required in Rules .0505, .0506 and .0508 of this Section.~~ Daily direct patient care nursing staff, licensed and unlicensed, shall equal or exceed 2.1 nursing hours per patient. (This is sometimes referred to as nursing hours per patient day or NIIPPD or NIPD.)

- (1) The first shift shall equal or exceed .9 hour per patient.

- (2) The second shift shall equal or exceed .7 hour per patient.

- (3) The third shift shall equal or exceed .4 hours per patient.

- (4) A remaining balance of .1 hour per patient is to be used flexibly to meet the variable needs of each facility on any shift.

(d) ~~An intermediate care facility shall provide in addition to the Director of Nursing, at least one licensed practical nurse on duty eight hours per day, seven days per week between the hours of 7:00 a.m. and 7:00 p.m. The total number of personnel to patient ratios shall meet total staffing requirements contained in Rules .0505, .0506 and .0509 of this Section. Registered and licensed practical nurses shall provide daily nursing care of at least .52 hour per patient.~~

- (1) The first shift shall provide at least .16 hour per patient.

(A) A registered nurse shall provide at least .12 hour per patient on first shift. This registered nurse shall not be the director of nursing. It must be a direct patient care nurse.

(B) The remaining .04 hour per patient may be either an RN or LPN;

- (2) The second shift shall provide at least .15 hour per patient. The requirements in Subparagraphs (d)(4) and (5) of this Rule shall be required even when higher than this minimum;

- (3) The third shift shall provide at least .15 hour per patient. The requirements in Subparagraphs (d)(4) and (5) of this Rule shall be required even when higher than this minimum;

- (4) Inclusive in these figures is the requirement that at least one licensed nurse is on duty for direct patient care at all times; and

- (5) Nursing care shall include the services of a registered nurse for at least eight consecutive hours a day, seven days a week. This coverage can be spread over more than one shift if such a need exists.

(e) ~~A licensed nurse shall be on duty for administering all medications and observing patient reaction to medications received, except for those medications a physician has ordered in writing to be administered by the patient, resident or someone other than a licensed nurse. Each facility shall determine its minimum allowable shift and daily staffing hours by multiplying the given NIIPPD or shift value by the applicable census figure. Nursing support personnel including ward clerks, secretaries, nurse educators and persons in primarily administrative management positions and not actively involved in direct pa-~~

tient care shall not be counted toward compliance with minimum daily requirements for direct care staffing.

(f) The number of total personnel on duty in addition to the Director of Nursing during a 24-hour period shall be at least 2.2 hours of care per patient day for skilled nursing facilities; 1.8 hours of care per patient day for intermediate care facilities; and .96 hours of care per resident day for domiciliary homes, as indicated in the charts contained in Rules .0508, .0509 and .0510 of this Section. The total allocation per 24 hours shall not be less than indicated on charts contained in Rules .0508, .0509 and .0510 of this Section, except in emergencies such as hazardous driving conditions or epidemic illness among staff. However, allocations of personnel by shift must be evaluated by the Director of Nursing to assure that patients' and residents' health, safety and personal care needs are met. All exceptions to meeting minimum staffing requirements shall be reported in writing to the Department at the end of each month. All exceptions to meeting minimum staffing requirements shall be reported to the Department at the end of each month. Staffing waivers granted by the federal government for Medicare and Medicaid certified beds shall be accepted for licensure purposes.

(g) All parttime staff shall meet personnel and training requirements contained in Rule .0513 of this Section.

(h) For purposes of determining compliance with the minimum staffing allowable, no employee working only eight hours a day shall be counted as meeting the numerical requirements indicated in Rules .0508, .0509 and .0510 of this Section on any two consecutive shifts or on two or more levels of care. An employee may be counted only for the hours worked and time actually spent in each portion of a nursing home, i.e., skilled nursing, intermediate care, domiciliary home portion(s) of the nursing home.

(i) (g) The ratio of male to female nurse aides will be determined by the needs of the patients, particularly the numbers of male patients requiring assistance with personal care.

Authority G.S. 131E-104; 42 U.S.C. 1396.

- .0508 SKILLED NURSING CARE STAFFING REQUIREMENTS (REPEALED)
- .0509 INTERMEDIATE NURSING CARE STAFFING REQUIREMENTS (REPEALED)

Statutory Authority G.S. 131E-104.

- .0510 DOMICILIARY HOME PERSONNEL REQUIREMENTS

(a) The Administrator shall designate a person to be in charge of the domiciliary home residents at all times. The nurse in charge of the skilled nursing facility or intermediate care facility may also serve as supervisor-in-charge of the domiciliary home or beds.

(b) If domiciliary home beds are located in a separate building or a separate level of the same building, there must be a person on duty in the domiciliary home at all times.

(c) A licensed facility shall provide sufficient staff to assure that activities of daily living, personal grooming, and assistance with eating are provided to each resident. Medication administration as indicated by each resident's condition or physician's orders shall be carried out as identified in each resident's plan of care.

(d) Domiciliary home staffing requirements, in addition to general requirements described in Rules .0505, .0506 and .0507 of this Section, shall be as follows:

First Shift	Second Shift
One person to every 20 or fewer residents	One person to every 20 or fewer residents
Third Shift	
One person to every 50 or fewer residents	

Domiciliary home facilities (Home for the Aged beds) licensed as a part of a combination nursing home shall comply with the staffing requirements of 10 NCAC 42D .1407 as adopted by the Social Services Commission for freestanding domiciliary homes.

Authority G.S. 131E-104; 42 U.S.C. 1396.

.0511 REHABILITATIVE NURSING AND DECUBITUS CARE

Each patient or resident shall be given care to prevent contractures, deformities, and decubiti, including but not limited to:

- (1) changing positions of bedfast and chairfast patients or residents every two hours and administering simple preventive care; Documentation of such care and outcome must be included in routine summaries or progress notes;
- (2) maintaining proper alignment and joint movement to prevent contractures and

deformities, which must be documented in routine summaries or progress notes;

- (3) implementing an individualized bowel and bladder training program except for patients or residents whose records are documented that such training is not effective; A monthly summary for ~~SNF~~ patients and ~~quarterly summaries for ICF patients and~~ domiciliary residents shall be written relative to each patient's or resident's performance in the bowel and bladder training program.

Authority G.S. 131E-104; 42 U.S.C. 1396.

SECTION .0700 - PHYSICIAN SERVICES

.0709 DOCUMENTATION

Physicians shall maintain appropriate clinical records as required of the physician in Rule .0609 of this Subchapter, including documentation of a physician visit to the patient by progress notes written at least every 90 days ~~in a skilled nursing facility and every 120 days in an intermediate care facility~~ and a discharge summary which includes the patient's or resident's prognosis, final diagnosis or cause of death.

Authority G.S. 131E-104; 42 U.S.C. 1396.

.0711 BRAIN INJURY REHABILITATION

In nursing homes with designated brain injury extended care units the attending physician responsible for a patient's care and rehabilitation program shall have specialized training or interest in rehabilitation. The intensity of the program requires that there shall be direct patient contact by a physician at least once per week and more often as the patient's condition warrants. Each patient's multi-discipline rehabilitation program shall be developed and implemented under the supervision of the attending physician. The attending physician shall actively participate in individual case conferences or care planning sessions and shall complete and sign discharge summaries and records within 15 days of patient discharge. When patients are to be discharged to either another health care facility or a residential setting the attending physician shall assure that the patient has been provided with a discharge plan which incorporates optimum utilization of community resources and post discharge continuity of care and services.

Statutory Authority G.S. 131E-104.

SECTION .1100 - SPECIALIZED REHABILITATIVE AND HABILITATIVE SERVICES

.1107 VENTILATOR DEPENDENCE

Patients requiring the use of ventilators for more than 20 hours a day have respiratory needs requiring the immediate availability of airway maintenance and cardiopulmonary resuscitation (CPR). Such ventilator dependent patients shall be arranged in units which shall meet the following special requirements:

- (1) A ventilator dependent unit shall be served by a single nursing station. Rooms designated for use by ventilator dependent patients shall be equipped with electrical receptacles on a system with an emergency power source. Oxygen to each patient's room shall be provided through a central fixed installation system.
- (2) Each unit shall be equipped with one full reclining wheelchair for each patient. There shall be a spare ventilator ready for emergency use 24 hours a day. Whenever the spare is placed in service it shall be replaced by another backup ventilator within 12 hours.
- (3) Respiratory therapy services shall be provided 24 hours a day and shall be under the supervision of a respiratory therapist who, at a minimum has received an associate degree in respiratory therapy from a program accredited by the American Medical Association, has at least one year of clinical experience in respiratory therapy and is eligible for registry as a therapist with the National Association of Respiratory Care. The services of a respiratory therapist shall be employed in the facility in a ratio of two hours per week per ventilator dependent patient with a minimum of 20 hours per week for one to ten patients. In the absence of the respiratory therapist, required respiratory therapy shall be provided by a respiratory therapy technician who has completed a qualifying one year AMA approved course or a registered nurse aide or other licensed nursing personnel who have been both approved as specially trained by the respiratory therapist and have the respiratory therapist on call. When there are more than 20 patients respiratory therapy services shall be increased at least 1.2 hours per patient day. The responsibilities of the respiratory therapist shall include:
 - (a) Administering breathing treatments such as intermittent positive pressure breathing, incentive spirometry, and aerosol treatments.
 - (b) Connecting patients to continuous ventilators, adjusting gas levels as directed

by a physician and reporting results to the physician.

- (c) Disassembling, cleaning, repair and reassembling of all humidity, oxygen and ventilation equipment.
- (d) Participation in interdisciplinary team conferences.
- (e) Reviewing or validating respiratory clinical notes.
- (4) Prior to being assigned any direct nursing care duties nursing personnel must be trained and competent in the following areas:
 - (a) knowledge of respiratory anatomy/ physiology;
 - (b) emergency equipment operation, alarm functions, airway maintenance and general emergency procedures;
 - (c) maintenance and trouble shooting of respiratory equipment;
 - (d) maintenance of medical records;
 - (e) CPR certification; and
 - (f) documentation of equipment maintenance.
- (5) Direct nursing care staffing shall be in accordance with Rule .1109 of this Section.

Statutory Authority G.S. 131E-104.

.1108 BRAIN INJURY EXTENDED CARE

Brain injury extended care is a multi-discipline intensive rehabilitative program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment, are at least one year post trauma, and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward restoring the individual to the optimal level of physical, cognitive and behavioral functioning.

- (1) Overall supervisory responsibility for brain injury extended care services shall be assigned to a registered nurse with one year experience.
- (2) Required clinical services, in addition to medicine and nursing, shall be physical therapy, occupational therapy, nutrition, and social work. Minimum requirements for each of the required additional clinical areas are as follows:
 - (a) Physical Therapy shall be provided by a physical therapist with a current valid North Carolina license working in the brain injury unit a minimum of 20 hours per week plus an additional two hours per week for each patient in excess of ten. (e.g.: 20 patients = 40 hours per week)

The assistance of a physical therapy assistant or aide shall be provided at the rate of two hours per week per active physical therapy patient on a facility wide basis with a minimum of 40 hours per week regardless of how small the census.

- (b) Occupational therapy shall be provided by an occupational therapist with a current valid North Carolina License working in the unit 20 hours per week plus an additional two hours per week for each patient in excess of ten. (e.g.: 20 patients = 40 hours per week) The assistance of an occupational therapy aide or assistant shall be provided at the rate of two hours per week per patient with a minimum of one full time aide.
- (c) Clinical nutrition services shall be provided by a qualified dietician with two years clinical training and experience in nutrition. Clinical nutrition services shall include:
 - (i) Assessing the appropriateness of the ordered diet for conformance with each patient's physiological and pharmacological condition.
 - (ii) Evaluate each patient's laboratory data in relation to nutritional status and hydration.
 - (iii) Apply technical knowledge of feeding tubes, pumps and equipment to each patient's specialized needs.
- (d) Clinical Social Work shall be provided by a clinician holding a Master's degree in Social Work (MSW) and certified by the Academy of Certified Social Workers (ACSW).
- (3) Optional clinical services to be provided on a case by case basis as prescribed or ordered shall include recreation therapy, respiratory therapy and speech pathology. Minimum requirements for each of these disciplines are as follows:
 - (a) Recreation therapy, when required, shall be provided by a clinician eligible for certification as a therapeutic recreation specialist by the State Board of Therapeutic Recreation Certification. In event that a qualified specialist is not locally available, alternate treatment modalities shall be developed by the occupational therapist and reviewed by the attending physician.
 - (b) Speech therapy, when required, shall be provided by a clinician with a current valid license in speech pathology issued by the State Board of Audiology and Speech pathology.

- (c) Respiratory therapy, when required, shall be provided by an individual meeting the same qualifications for providing respiratory therapy under Rule .1107 of this Section.
- (4) Each patient's rehabilitation program shall be governed by a multi-discipline treatment plan incorporating and expanding upon the health plan required under Section .0400 of this Subchapter. The plan is to be initiated on the first day of admission. Upon completion of baseline data development and an integrated interdisciplinary assessment the initial treatment plan is to be expanded and finalized within 14 days of admission. Through an interdisciplinary process the treatment plan shall be reviewed at least monthly and revised as appropriate. In executing the treatment plan the interdisciplinary team shall be the major decision-making body and shall determine the goals, process, and time frames for accomplishment of each patient's program. Disciplines to be represented on the team shall be medicine, nursing, clinical pharmacy and all other disciplines directly involved in the patient's treatment or treatment plan.
- (5) Each patient's overall rehabilitation program shall be assigned to an individually designated program manager. The program manager shall be responsible for:
- coordinating the development, implementation and periodic review of the patient's treatment plan;
 - preparing a monthly summary of the patient's progress;
 - cultivating the patient's participation in the program;
 - general supervision of the patient during the course of treatment;
 - evaluating appropriateness of the treatment plan in relation to the attainment of stated goals; and
 - assuring that discharge decisions and arrangements for post discharge follow-up are properly made.
- (6) For each 20 patients or fraction thereof dedicated treatment facilities and equipment shall be provided as follows:
- A speech therapy room with dimensions which equal or exceed 175 square feet and which is so designed and maintained as to permit free movement of three fully opened reclining wheelchairs.
 - Two occupational physical therapy rooms, each with dimensions which equal or exceed 600 square feet. Each room shall be equipped with three double size mat tables, one tilt table, and one set of free standing or foldaway parallel bars. Each room is to be plumbed with a sink suitable for hand washing. Each room shall open directly to a wheelchair accessible water closet.
 - One full reclining wheelchair per patient.
 - Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs including splints, casts, cushions, wedges, and bolsters.
 - There shall be roll in bath facilities with a dressing area available to all patients and which shall afford maximum privacy to the patient.

Statutory Authority G.S. 131E-104.

.1109 SPECIAL NURSING REQUIREMENTS

Direct care nursing personnel staffing ratios established in Section .0500 of this Subchapter shall not be applied to nursing services for patients who are either ventilator dependent or require brain injury extended care. When such services are provided the table in this Rule establishes the minimum acceptable direct care nursing staff ratios per patient. It is also required that regardless of how low the patient census the direct care nursing staff shall not fall below a registered nurse and a nurse aide I at any time during a 24 hour period. The minimum direct care nursing staff ratios are:

STAFF POSITION	1st SHIFT STAFF RATIO	2nd SHIFT STAFF RATIO
RN	.8 NH P	.4 NH P
LPN	.8 NH P	.8 NH P
NA I	.75 NH P	.75 NH P
NA (Trainee)	0	0
STAFF POSITION	3rd SHIFT STAFF RATIO	DAILY REQUIREMENTS
RN	.4 NH P	1.6 NH P
LPN	.4 NH P	2.0 NH P
NA I	.4 NH P	1.9 NH P
NA (Trainee)	0	0

Statutory Authority G.S. 131E-104.

SECTION .1500 - DESIGN AND CONSTRUCTION

.1501 GENERAL RULES

(d) The domiciliary home portion of a combination facility must meet the rules of the skilled for a nursing and the intermediate care facility contained in Sections .1500, .1600, .1700 and

.1800 of this Subchapter, except when separated by a two-hour fire resistive construction. In this case, the domiciliary home portion must meet the rules for domiciliary homes, 10 NCAC 42D, and supporting areas must be located in the same area of the facility as the domiciliary home portion.

Authority G.S. 131E-104; 42 U.S.C. 1396.

SECTION .1600 - FUNCTIONAL REQUIREMENTS

.1612 REQUIRED SPACES

(b) The total space set aside for dining, recreation and other common uses shall not be less than 25 square feet per bed for a ~~SNF and an ICF~~ nursing facility and 30 square feet per bed for a domiciliary home. Physical therapy and occupational therapy space shall not be included in this total:

- (1) In new nursing homes diversional activity and therapeutic recreation areas shall be provided separate from the main living and dining areas.
- (2) Dining, recreation and other common use areas shall be designed and equipped to provide accessibility to both wheel chair and ambulatory patients.
- (3) Recreation and other common use areas shall be designed for independent and group activity use.
- (4) Closets and other storage areas for equipment and supplies shall not be included in the required dining, recreation and common use floor space area.
- (5) Handicap accessible outdoor areas for individual and group activities shall be provided.

Authority G.S. 131E-104; 42 U.S.C. 1396.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Certificate of Need Section, Division of Facility Services, Department of Human Resources intends to amend rule(s) cited as 10 NCAC 3R .0317, .1113, .1115 - .1120 and adopt 3R .1124.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 3:00 p.m. on December 17, 1990 at the Council Build-

ing, Room 201, 701 Barbour Drive, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning the rules should be submitted as soon as possible but no later than December 17, 1990 to Lynda McDaniel, 701 Barbour Drive, Raleigh, North Carolina 27603. Oral comments may be presented at the hearing.

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0300 - APPLICATION AND REVIEW PROCESS

.0317 WITHDRAWAL OF A CERTIFICATE

(i) In direct response to the 1987 Omnibus Budget Reconciliation Act's replacement of the terms "skilled nursing facility" and "intermediate care facility" with "nursing facility" for use by Medicaid certified nursing facilities, the CON Section will not withdraw a certificate of need if the holder of the certificate develops or operates a nursing facility without designating its nursing facility beds as either skilled nursing facility beds and/or intermediate care facility beds. In all other respects, the holder of the certificate shall develop and operate the facility in material compliance with representations made in the CON application and any conditions placed on the certificate by the Department.

Statutory Authority G.S. 131E-177; 131E-189.

SECTION .1100 - CRITERIA AND STANDARDS FOR NURSING FACILITY SERVICES

.1113 DEFINITIONS

The definitions in this Rule will apply to all rules in this Section:

- (1) A nursing home facility means a health care facility as defined in G.S. 131E-101(6), offering nursing care, medical care, and personal care services to persons who, by reason of illness, infirmity or advanced age are unable to care for themselves and who have health problems which range from minimal to very serious. All nursing homes provide skilled nursing care or intermediate care or a combination of the two. These levels of care can be further defined as follows:

- (a) "Skilled nursing care services" means care rendered in a facility or part of a facility licensed under state law to provide nursing services to patients requiring such services. The facility rendering skilled nursing services must:

- (i) (a) have a physician, a registered nurse or a medical staff responsible for the execution of policies;
- (ii) (b) maintain clinical records on all patients;
- (iii) (c) provide 24-hour nursing service, via registered nurses and licensed practical nurses, to the patients who require skilled nursing care;
- (iv) (d) employ at least one registered nurse full time;
- (v) (e) maintain a utilization review plan.
- (b) "Intermediate care services" means care rendered in a facility or part of a facility licensed under state law to provide health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but who, because of their mental or physical condition, require care and services above the level of room and board. The facility must provide nursing care, via one registered nurse or one licensed practical nurse, on each day shift.
- (2) "Nursing home services" means any of the services defined in this Rule.
- (2) "Brain injury extended care" is defined as a multi-discipline intensive rehabilitative program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment, are at least one year post trauma and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised interdisciplinary process and are directed toward restoring the individual to the optimal level of physical, cognitive and behavioral functioning.
- (3) "Ventilator dependence" means patients who require the use of ventilators for more than 20 hours a day and have respiratory needs requiring the immediate availability of airway maintenance and cardiopulmonary resuscitation (CPR).

Statutory Authority G.S. 131E-177(1).

.1115 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA

- (a) Proposals filed by or on behalf of nursing facilities for nursing home services must be consistent with the North Carolina State Medical Facilities Plan.
- (b) A proposal to provide new or expanded nursing facility skilled nursing care or intermedi-

ate care services must specify the numbers of nursing facility skilled nursing and intermediate care beds to be operated following the completion of the proposed project.

(c) A proposal to provide new nursing facility skilled nursing care beds shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the proposal, of the total number of functional nursing facility skilled nursing beds within the facility in which the new beds are to be operated is at least 90 percent.

(d) A proposal to provide new intermediate care beds shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the proposal, of the total number of functional intermediate care beds within the facility in which the new beds are to be operated is at least 90 percent.

(e) (d) A proposal to convert existing licensed domiciliary beds to nursing facility beds skilled nursing care or intermediate care services must demonstrate that the proponent has adequately planned for the relocation or displacement of existing domiciliary residents. Additionally such relocation or displacement must not result in excessive additional costs or unreasonable hardship to current domiciliary residents who are displaced or relocated and that adequate resources either exist or are being developed within the applicants' service area to meet the needs of the displaced resident.

(e) Proposals filed by or on behalf of facilities for demonstration special care units must be consistent with demonstration special care bed need projections and policies in the North Carolina State Medical Facilities Plan.

(f) A proposal to establish a demonstration special care unit shall not be approved if approval of the proposal will result in any reduction of the existing supply of nursing facility beds in the service area.

(g) A proposal to establish a demonstration special care unit must demonstrate that the addition of the unit shall not result in a diminishing of services or unreasonable hardship to current nursing facility patients and or domiciliary residents.

Statutory Authority G.S. 131E-177(1).

.1116 SCOPE OF SERVICES OFFERED

- (a) Proposals involving the opening of new nursing facilities or the conversion of existing non-nursing facility beds home facilities for the provision of skilled nursing or intermediate care services shall not be approved unless all current licensure standards have been met in accordance

with G.S. Chapter 131E, Article 6, Part A. Documentation must be presented to indicate that all services required by law can be provided.

(b) Proposals must delineate services to be offered and provide assurance that coordination will exist between the proponent and other health care providers in the service area.

(c) A proposal to establish a demonstration special care unit shall not be approved unless all current licensure standards have been met in accordance with G.S. 131E, Article 6, Part A, and the facility has not operated on a Provisional License and/or had its admissions suspended within 18 months of the submittal of the proposal.

(d) A proposal to establish a demonstration special care unit must delineate all services to be offered for each designated category of patient proposed to be served, in the special care unit.

Statutory Authority G.S. 131E-177(1).

.1117 PROJECTED UTILIZATION/ OCCUPANCY

(a) A proposal to provide new or expanded nursing facility skilled nursing or intermediate care services must project an occupancy level for the entire facility as well as for the specific skilled nursing care and intermediate services for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies and case mix are projected, must be clearly stated.

(b) A proposal to provide new or expanded skilled nursing care services shall not be approved unless occupancy is projected to be at least 90 percent for the total number of skilled nursing care beds proposed to be operated, no later than two years following the completion of the proposed project. Furthermore, a proposal to provide new or expanded skilled nursing care services via a net bed addition to the facility's total skilled nursing and intermediate care bed capacity shall not be approved unless occupancy is projected to be at least 90 percent for the total number of skilled nursing and intermediate care beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, must be clearly stated.

(c) (b) A proposal to provide new or expanded nursing facility intermediate care services shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility intermediate care beds proposed to be operated, no later than two years following the completion of the proposed project. Fur-

thermore a proposal to provide new or expanded nursing facility intermediate care services via a net bed addition to the facility's total nursing facility skilled nursing and intermediate care bed capacity shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility skilled nursing and intermediate care beds proposed to be operated, no later than two years following the completion of the proposed projects. All assumptions, including the specific methodologies by which occupancies and case mix are projected, must be clearly stated.

Statutory Authority G.S. 131E-177(1).

.1118 PROJECTED PATIENT ORIGIN

(a) A proposal to provide new or expanded nursing facility skilled nursing or intermediate care services must project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, must be clearly stated.

(b) A proposal to provide new or expanded nursing facility skilled nursing or intermediate care services must show that at least 85 percent of the anticipated patient population is within 45 minutes automobile driving time (one-way) from the facility, with the exception that this standard may be waived for facilities, such as fraternal or religious facilities, and facilities part of residential retirement centers and demonstration special care units which make services available to large or geographically diverse populations.

Statutory Authority G.S. 131E-177(1).

.1119 SITE, BUILDING, AND EQUIPMENT

(a) A proposal to provide new or expanded nursing facility skilled nursing or intermediate care services must specify the site on which the services are to be operated. If such site is neither owned by nor under option to the proponent, the proponent must provide a written commitment to diligently pursue acquiring the site if and when certificate of need health planning approvals are granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.

(b) A proposal to provide new or expanded nursing facility skilled or intermediate care services must clearly demonstrate that consideration has been given to factors that may delay or prevent the development or offering of services on the proposed site.

(c) A proposal to provide new or expanded nursing facility ~~skilled or intermediate~~ services must provide documentation to show that the services will be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies.

Statutory Authority G.S. 131E-177(1).

.1120 STAFFING

(a) A proposal to provide new or expanded nursing facility ~~skilled nursing or intermediate care~~ services must provide documentation to show that the appropriate numbers and types of staff, particularly medical and nursing staff, will be available to support the services.

(b) An applicant proposing to establish a demonstration special care unit shall identify and justify the number of staff required and or to be utilized for services to patients in the following categories:

- (1) brain injury rehabilitation.
- (2) brain injury extended care.
- (3) ventilator dependence.
- (4) other.

(c) The applicant shall not be approved unless documentation is provided showing the availability and proximity of credentialed ancillary and support staff to the proposed demonstration special care unit.

Statutory Authority G.S. 131E-177(1).

.1124 ACCESSIBILITY TO SERVICES

(a) A proposal to provide new or expanded nursing facility beds or a demonstration special care unit shall provide assurance that the facility will be certified for Medicaid and Medicare reimbursement upon completion of the project.

(b) The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.

(c) The applicant shall provide a copy of the written admissions policies identifying any pre-payment or deposit requirements for the facility and clearly stating the admissions requirements for the following payor categories:

- (1) private pay,
- (2) medicaid beneficiaries,
- (3) medicare beneficiaries,
- (4) uninsured indigent patients,
- (5) underinsured indigent patients, and
- (6) fully insured patients.

(d) The applicant shall provide a written description of the billing procedures, including the credit collection policies, that will be utilized by the facility.

(e) The applicant shall provide assurances that residents of North Carolina shall be given priority for admission to the demonstration special care unit.

(f) The applicant shall provide documentation that the facility and demonstration special care unit will match or exceed the average percent of patients in the combined categories of Medicare and Medicaid provided by the existing and approved nursing facilities in the proposed service area.

Statutory Authority G.S. 131E-177(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Social Services intends to amend rule(s) cited as 10 NCAC 42B .1201, .1302; 42C .2001 - .2002, .2006; 47B .0404 - .0405; 49B .0606; repeal rule(s) cited as 10 NCAC 42B .0902 - .0903; and adopt rule(s) cited as 10 NCAC 46H .0109.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 10:00 a.m. on December 5, 1990 at the Disability Determination Services Conference Room, 321 Chapanoke Road, Raleigh, N.C.

Comment Procedures: Interested persons may present their views and comments in writing before or at the hearing, or orally at the hearing. Time limits may be imposed as deemed necessary by the Commission Chairman. A fiscal note has been prepared. Any person may request information or copies of the proposed regulations by writing or calling Donna A. Creech, Special Assistant, Social Services, 325 N. Salisbury St., Raleigh, NC 27603 (919) 733-3055.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42B - LICENSING OF HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

SECTION .0900 - IDENTIFYING INFORMATION

- .0902 GROUP HOMES WITH TWO TO SIX RESIDENTS (REPEALED)
- .0903 GROUP HOMES WITH SEVEN TO NINE RESIDENTS (REPEALED)

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .1200 - PERSONNEL

.1201 PERSONNEL REQUIREMENTS

The qualifications of administrator, co-administrator, supervisor-in-charge, manager, and co-manager are as follows:

- (1) must be an adult;
- (2) must be a high school graduate or certified under the G.E.D. Program (applies to those employed on or after March 1, 1991);
- (3) ~~(2)~~ must be in good physical, mental and emotional health (DSS-1864);
- (4) ~~(3)~~ must provide written documentation about convictions of criminal offenses from the clerk of court in the county in which the conviction was made, and about any driving offenses other than minor traffic violations from the motor vehicles office;
- (5) ~~(4)~~ must be willing to improve abilities by taking suitable courses offered in the local community and attending workshops related to the management of homes and training of developmentally disabled adults.

Statutory Authority G.S. 131D-2; 143B-153; 168-1; 168-9.

SECTION .1300 - THE HOME

.1302 CONSTRUCTION

(a) ~~The home with seven to nine residents must meet the standards set forth in Section 520 of Volume I of the North Carolina State Building Code. A copy of this document may be obtained from the North Carolina Department of Insurance, 430 North Salisbury Street, Raleigh, North Carolina 27611.~~

(b) ~~If the capacity is two to six, it must meet either the above mentioned standards or the standards required for family care homes.~~

Group homes for developmentally disabled adults must meet the applicable requirements of the North Carolina State Building Code in force at the time of initial licensure. Group homes which increase capacity or which change ownership must meet the applicable requirements of the North Carolina State Building Code in force at that time.

Statutory Authority G.S. 131D-2; 143B-153.

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2000 - PERSONNEL

.2001 QUALIFICATIONS OF

ADMINISTRATOR

The administrator must meet certain requirements before and after being approved to manage a licensed home. The administrator is responsible for the home, including the development and management of services and accommodations and the hiring and training of qualified staff so that the home meets the rules of this Subchapter even in his absence.

All of the following requirements must be met:

- (1) The potential administrator must apply on the License Application (DSS-1860). The Recommendation for a License (DSS-1861) is to be completed by the county department of social services and forwarded along with references and other appropriate forms to the Division of Facility Services for approval or disapproval;
- (2) The administrator must be 18 years of age or older;
- (3) The administrator must be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements, including those of the Civil Rights Act of 1964 when the administrator has signed Form DSS-1464;
- (4) The administrator, or a person designated in writing by the administrator to act as his agent and make decisions on his behalf, must meet with the Adult Homes Specialist at the Specialist's request at an agreed time in the home as often as necessary to insure compliance with the standards;
- (5) The administrator must meet the general health requirements specified in Rule .2004 of this Subchapter;
- (6) The administrator must provide at least three current reference letters or the names of individuals with whom a reference interview can be conducted. The individuals providing reference information must be knowledgeable of the applicant administrator's background and qualifications and must include at least one former employer.
- (7) The administrator must provide written documentation about convictions of criminal offenses from the clerk of court in the county in which the conviction was made, and about any driving offenses other than minor traffic violations from the motor vehicles office;
- (8) The administrator must meet the requirements of either (a) or (b) of this Paragraph in accordance with procedures established by the Department of Human Resources;
- (a) The administrator must verify that he has worked in a licensed domiciliary facility

for at least 30 days in an on-the-job training program approved by the Department of Human Resources; or

- (b) The administrator must verify that he has past education, training and experience related to the management and operation of adult residential care facilities;
- (9) The administrator must verify that he earns 15 hours a year of continuing education credits related to the management of domiciliary homes and care of aged and disabled persons in accordance with procedures established by the Department of Human Resources. The requirement for earning continuing education credits does not apply in those situations where the administrator is also a currently licensed nursing home administrator; and
- (10) Persons applying for approval to be an administrator must demonstrate an adequate working knowledge of the rules of this Subchapter by passing a written examination in accordance with procedures established by the Department of Human Resources.
- (11) The administrator (approved on or after March 1, 1991) must be at least a high school graduate or certified under the G.E.D. Program.

Statutory Authority G.S. 131D-2; 143B-153.

.2002 QUALIFICATIONS OF SUPERVISOR-IN-CHARGE

The supervisor-in-charge is responsible to the administrator for carrying out the program in the home in the absence of the administrator. All of the following requirements must be met:

- (1) The applicant must complete the Application for Supervisor-in-Charge (DSS-1862);
- (2) The qualifications of the administrator and co-administrator referenced in Paragraphs (2), (5), (6), and (7) of Rule .2001 of this Subchapter shall apply to the supervisor-in-charge. The supervisor-in-charge (employed on or after March 1, 1991) must meet a minimum educational requirement by being at least a high school graduate or certified under the G.E.D. Program or by passing an alternative examination established by the Department of Human Resources. Documentation that these qualifications have been met must be on file in the home prior to employing the supervisor-in-charge;
- (3) The supervisor-in-charge must be willing to work with bonafide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements;

- (4) The supervisor-in-charge must verify that he earns 12 hours a year of continuing education credits related to the management of domiciliary homes and care of aged and disabled persons in accordance with procedures established by the Department of Human Resources;
- (5) When there is a break in employment as a supervisor-in-charge of one year or less, the educational qualification under which the person was last employed will apply.

Statutory Authority G.S. 131D-2; 143B-153.

.2006 QUALIFICATIONS OF ACTIVITIES COORDINATOR

Since activities are a required part of the program of the family care home, there must be a designated activities coordinator who meets the requirements and qualifications set forth in this Rule.

- (1) The qualifications of the administrator and co-administrator referenced in Paragraphs (2) and (5) of Rule .2001 of this Subchapter shall apply to the activities coordinator. The activities coordinator (employed on or after March 1, 1991) must meet a minimum educational requirement by being at least a high school graduate or certified under the G.E.D. Program or by passing an alternative examination established by the Department of Human Resources;
- (2) The activities coordinator must complete, within 18 months of employment or assignment to this position, the 48 hour course entitled "The Activities Coordinator Program." A person with a degree in recreational administration or a related field meets this requirement as does a person who completed the required course before the effective date of this Rule; and
- (3) The activities coordinator must be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements.

Statutory Authority G.S. 131D-2; 143B-153.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46II - POLICIES FOR PROVISION OF CHILD DAY CARE SERVICES

SECTION .0100 - GENERAL POLICIES

.0109 PARENTAL FREEDOM OF CHOICE

- (a) Parents receiving assistance for their children under the purchase of care program shall

have the right to choose any day care provider, approved for participation in the purchase of care program under Subchapters 46E, 46F, or 46G of these Rules, to provide day care services for their eligible children.

(b) Purchasing agencies administering funds under the purchase of care program shall notify parents applying for participation in the program of their right to choose the approved day care provider which will provide day care services to their eligible children.

Statutory Authority G.S. 143B-153.

CHAPTER 47 - STATE/COUNTY SPECIAL ASSISTANCE

SUBCHAPTER 47B - ELIGIBILITY DETERMINATION

SECTION .0400 - ELIGIBILITY FACTORS

.0404 RESERVE

- (e) Group II - reserve items counted:
 - (17) remainder interest, if salable;
 - (18) amount of reverse mortgage remaining in the month following the month of receipt.
- (f) Group II - reserve items excluded:
 - (17) irrevocable burial contract;
 - (18) reverse mortgages in the month of receipt.

Statutory Authority G.S. 108A-41; 108A-46; 143B-153.

.0405 INCOME

- (d) Unearned Income not Counted:
 - (23) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
 - (24) reverse mortgages.

Statutory Authority G.S. 108A-26; 108A-41; 143B-153.

CHAPTER 49 - AFDC

SUBCHAPTER 49B - ELIGIBILITY DETERMINATION

SECTION .0600 - PAYMENT PROCEDURES

.0606 CORRECTION OF OVERPAYMENTS

(a) If the recipient is not entitled to all or part of a check which has been issued and fraud is not suspected, the county shall take all reasonable steps to recover promptly any overpayment of thirty-five dollars (\$35.00) or more.

(b) Overpayments shall be collected as follows:

- (1) voluntary repayment by grant reduction or recipient refund;
- (2) involuntary repayment by grant reduction;
- (3) if an overpayment occurs due to a county error in complying with program regulations, the overpayment shall be recouped by state office adjustment;
- (4) if an overpayment occurs due to a state or county processing error, the overpayment shall be recouped from the recipient providing the recipient was provided proper notification of the amount of AFDC he was eligible to receive;
- (5) if an overpayment occurs due to a state office error in interpreting regulations, the overpayment shall be charged to the state.

(c) A county may recoup an AFDC overpayment from a recipient's AFDC check, on account of an overpayment made to the recipient's spouse, parent, child, sibling, or other person, only if the recipient, at the time the overpayment occurred, was:

- (1) 18 years of age or older,
- (2) living with the person, and
- (3) part of the assistance unit.

Authority G.S. 143B-153; 45 C.F.R. 233.20.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the EHN - Division of Coastal Management intends to adopt rule cited as 15A NCAC 7J .1109 and amend rules cited as 15A NCAC 7H .0208, .1103, .1203, .1303, .1403, .1503, .1603, .1703, .1803, .1903; 7J .0204, .0404 - .0406, .0409.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 10:00 a.m. on December 6, 1990 at the North Carolina Aquarium, Roanoke Island, Manteo, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Dedra Blackwell, Division

of Coastal Management, P.O. Box 27687,
Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR
AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins must be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.

(I) Maintenance excavation in canals, channels and boat basins within primary nursery areas should be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application.

(i) The applicant can demonstrate and document that a water-dependent need exists for the excavation.

(ii) There exists a previously permitted channel which was constructed or maintained under permits issued by the State and or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there must be clear evidence that the channel was continuously used for a specific purpose.

(iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas.

(iv) The original depth and width of a human-made or natural channel will not be increased to allow a new or expanded use of the channel.

Statutory Authority G.S. 113A-107(b);
113A-108; 113A-113(b); 113A-124.

SECTION .1100 - GENERAL PERMIT
PROCEDURE

.1103 PERMIT FEE

No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars

(\$50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107(a);
113A-107(b); 113A-113(b); 113A-118.1;
113A-119; 113A-124.

SECTION .1200 - GENERAL PERMIT FOR
CONSTRUCTION OF PIERS, DOCKS, AND
BOAT HOUSES IN ESTUARINE AND PUBLIC
TRUST WATERS

.1203 PERMIT FEE

No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107(a);
113A-107(b); 113A-113(b); 113A-118.1;
113A-119; 113A-124.

SECTION .1300 - GENERAL PERMIT TO
MAINTAIN, REPAIR AND CONSTRUCT BOAT
RAMPS ALONG ESTUARINE SHORELINES
AND INTO ESTUARINE AND PUBLIC TRUST
WATERS

.1303 PERMIT FEE

No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107(a);
113A-107(b); 113A-113(b); 113A-118.1;
113A-119; 113A-124.

SECTION .1400 - GENERAL PERMIT FOR
CONSTRUCTION OF WOODEN GROINS IN
ESTUARINE AND PUBLIC TRUST WATERS

.1403 PERMIT FEE

No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107(a);
113A-107(b); 113A-113(b); 113A-118.1;
113A-119; 113A-124.

SECTION .1500 - GENERAL PERMIT FOR
EXCAVATION WITHIN OR CONNECTING TO
EXISTING CANALS, CHANNELS, BASINS, OR
DITCHES IN ESTUARINE WATERS, PUBLIC
TRUST WATERS, AND ESTUARINE
SHORELINE AEC'S

.1503 APPLICATION FEE

~~No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.~~

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-119; 113A-124.

SECTION .1600 - GENERAL PERMIT FOR THE INSTALLATION OF AERIAL AND SUBAQUEOUS UTILITY LINES WITH ATTENDANT STRUCTURES IN COASTAL WETLANDS; ESTUARINE WATERS; PUBLIC TRUST WATERS AND ESTUARINE SHORELINES

.1603 PERMIT FEE

~~No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.~~

Statutory Authority G.S. 113-229(c)(1); 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-119.

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

.1703 PERMIT FEE

~~No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.~~

Statutory Authority G.S. 113-229(c)(1); 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-119.

SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING LANDWARD OF THE MEAN HIGH WATER MARK IN THE OCEAN HAZARD AEC

.1803 PERMIT FEE

~~No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.~~

Statutory Authority G.S. 113-229(c)(1); 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-119.

SECTION .1900 - GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN ESTUARINE AND OCEAN HAZARD AECS

.1903 PERMIT FEE

~~No fee will be assessed for this permit. The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.~~

Statutory Authority G.S. 113-229(c)(1); 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-119.

SUBCHAPTER 7J - PROCEDURES FOR HANDLING MAJOR DEVELOPMENT PERMITS; VARIANCE REQUESTS; APPEALS FROM MINOR DEVELOPMENT PERMIT DECISIONS; AND DECLARATORY RULINGS

SECTION .0200 - APPLICATION PROCESS

.0204 PROCESSING THE APPLICATION

(b) Application processing will begin when an application is accepted as complete. Before an application will be accepted as complete, the following requirements must be met:

(6) the application fee must be paid as set out in this Subparagraph:

(A) Major development permit - a check or money order payable to the Department for ~~one hundred dollars (\$100.00), except where permits are eligible for expeditious review, in which case the fee will be twenty-five dollars (\$25.00);~~ two hundred fifty dollars (\$250.00);

Statutory Authority G.S. 113-229; 113A-119; 113A-122(c); 113A-124.

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

.0404 DEVELOPMENT PERIOD EXTENSION

(d) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of ~~twenty-five dollars (\$25.00);~~ fifty dollars (\$50.00).

Statutory Authority G.S. 113A-119; 113A-124(c)(5).

.0405 PERMIT MODIFICATION

(c) The applicant for a permit modification must submit with the request a check or money order payable to the Department in the sum of fifty dollars (\$50.00) for a minor modification and two hundred fifty dollars (\$250.00) for a major modification.

Statutory Authority G.S. 113-229; 113A-119; 113A-124(c)(5).

.0406 PERMIT ISSUANCE AND TRANSFER

(f) The applicant for a permit transfer must submit with the request a check or money order payable to the Department in the sum of fifty dollars (\$50.00).

Statutory Authority G.S. 113A-118(c); 113A-119(a).

.0409 CIVIL PENALTIES

(f) Amount of Assessment.

(4) Pursuant to Subparagraph (f)(3) of this Rule, civil penalties for major development violations shall be assessed in accordance with the following criteria. Assessments resulting from any violation which does not fit the following criteria shall be made using the best information available at the time of the assessment.

(A) Development which could have been permitted shall be subject to a minimum civil penalty ~~of one hundred dollars (\$100.00).~~ equal to twice the application fee and in no case less than two hundred fifty dollars (\$250.00). This category shall include only development that can, at the time of assessment, meet all of the following four criteria:

- (i) consistency with the local land use plan;
- (ii) consistency with the Act and commission rules;
- (iii) proof of notification of adjacent riparian property owners; and
- (iv) no significant objections from these adjacent riparian property owners.

(B) Civil penalties for development which could not have been permitted shall be assessed as follows. This category shall include development that is sufficiently inconsistent with the local land use plan, Act, or commission's rules to have warranted denial if the permit application process had been followed. In all cases, restoration shall be required to the fullest extent practicable consistent with the need to avoid additional damage to the resources, and penalties shall be assessed as follows:

- (i) Development which involves wetlands alteration or other damage which has been completely restored with no permanent, irreversible, or long-term adverse impacts on coastal resources shall be subject to ~~the a minimum civil penalty of one hundred dollars (\$100.00).~~ equal to twice the application fee and

in no case less than two hundred fifty dollars (\$250.00);

(ii) Development which involves damage that was not completely restored but did not involve permanent or irreversible adverse impacts on coastal resources, or development which is of such a nature that it reflects a reckless disregard for its adverse impacts or has a high potential for permanent, long-term or irreversible adverse impacts on coastal resources, shall be subject to a civil penalty one-half of that specified for the area affected according to Schedule A of this Rule;

(iii) Development which involves wetlands alteration or other damage which causes permanent or irreversible adverse impacts on coastal resources shall be subject to a civil penalty of an amount graduated according to Schedule A of this Rule;

(iv) Development that does not involve disruption of an area of a specific size, has undetermined impacts, or has impacts that are difficult or impractical to determine shall be subject to ~~the minimum one hundred dollar (\$100.00) assessment; a minimum penalty equal to twice the application fee and in no case less than two hundred fifty dollars (\$250.00);~~ or

(v) Any structure or part of a structure that is constructed in violation of the local land use plan, the Act, or the Commission's rules shall be removed or modified as is necessary to correct the violation, and the liable party shall be assessed ~~the minimum penalty of one hundred dollars (\$100.00).~~ a minimum penalty equal to twice the application fee and in no case less than two hundred fifty dollars (\$250.00). If the structure is not removed or modified as requested, a court order will be sought to compel the necessary removal or modification and the liable party shall be subject to continuing assessment according to Subparagraph (f)(4)(G) of this Rule.

Statutory Authority G.S. 113A-124; 113A-126(d).

SECTION .1100 - GENERAL PERMIT PROCEDURE

.1109 PERMIT FEE

The Commission shall establish a processing fee for each category of general permits. The fees must be paid by check or money order payable to the Department.

Statutory Authority G.S. 113-229(c)(1); 113A-107; 113A-118.1; 113A-119; 113A-124(c)(5).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Water Treatment Facility Operators Board of Certification intends to amend rule(s) cited as 15A NCAC 18D .0201, .0403 and adopt 18 D .0206.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 9:30 a.m. on December 11, 1990 at the Jane S. McKimmon Center, N. C. State University, Western Boulevard, Raleigh, NC.

Comment Procedures: Any person requiring information may contact Mr. John C. McFadyen, P. O. Box 27687, Raleigh, NC 27611, Telephone (919) 733-0379. Written comments may be submitted to the above address 30 days prior to the public hearing. Written and oral comments may also be presented at the public hearing. Notice of an oral presentation must be given to the above address at least 3 days prior to the public hearing.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

.0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall meet the following educational and experience requirements:

- (6) Grade A- Well shall have one year of acceptable experience while holding a Grade B-Well certificate.

Statutory Authority G.S. 90A-21(c), -22, -23.

.0206 CERTIFIED OPERATORS REQUIRED

(a) There shall be an operator in responsible charge for each water treatment facility.

(b) There shall be an operator holding at least a Class C surface certification or above on duty when a Class A or Class B surface water treatment facility is treating water.

Statutory Authority G. S. 90A-29.

SECTION .0400 - ISSUANCE OF CERTIFICATE

.0403 ISSUANCE OF GRADE CERTIFICATE

(b) To obtain ~~an A, B, C, B well, or C well~~ a certificate the applicant shall satisfactorily complete an examination; except in the case of a temporary certificate or when certification is by reciprocity.

Statutory Authority G.S. 90A-21(c), -23, -25.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Certified Public Accountant Examiners intends to amend rule(s) cited as 21 NCAC 8A .0105, .0301; 8F .0105; 8G .0204, .0305; 8I .0005; 8J .0007 - .0008; 8K .0104 - .0105; repeal rule(s) cited as 21 NCAC 8G .0306; 8J .0003; and adopt rule(s) cited as 21 NCAC 8A .0315; 8G .0310 - .0312; 8J .0010; 8M .0101 - .0104, .0201 - .0202, .0204, .0206 - .0207, .0301 - .0307, .0401 - .0403.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 9:00 a.m. on December 10, 1990 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Ste. 1041, Raleigh, NC 27605.

Comment Procedures: Any person interested in these Rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than Monday, November 19, 1990. Anyone planning to attend the hearing should notify the Board office by noon on Monday, November 19, 1990, whether they wish to speak on the proposals and whether they will speak in favor of the proposals or against them. Anyone speaking on the proposals will be limited to ten minutes.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

.0105 PURPOSES AND RESPONSIBILITIES

(c) The Board is composed of five persons who are CPAs and two persons who are not CPAs but who represent the public at large. ~~The Board's staff includes an Executive Director, who is a CPA; a Deputy Director; a Director of Professional Standards, who is a CPA; other full-time staff members; and several part-time assistants.~~

Statutory Authority G.S. 93-12.

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (15) "License year" means the 12 months beginning July 1 and ending June 30;
- (16) "Member of a firm" means any CPA who has an ownership interest in a CPA firm including owners, partners and shareholders;
- (17) ~~(16)~~ "NASBA" means the National Association of State Boards of Accountancy;
- (18) ~~(17)~~ "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (19) "North Carolina office" means any office physically located in North Carolina;
- (20) "Participating firm" means a firm participating in SQR. Does not include firms exempt by reason of 21 NCAC 8M .0102(a) or deemed in compliance pursuant to 21 NCAC 8M .0104;
- (21) ~~(18)~~ "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who does not receive any earned compensation for current personal services in any job whatsoever; however, this does not preclude volunteer services for which the retired CPA receives no direct nor indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA. Limited exemptions may be granted in the discretion of the Board only in those instances when an applicant for "retired" status shows the personal services are unrelated to the field of accounting and the applicant verifies no intent to return to active status; ~~and~~
- (22) ~~(19)~~ "Revenue Department" means the North Carolina Department of Revenue;

(23) "Review team" means that team of CPAs which reviews a firm pursuant to the requirements of Subchapter 8M. May be comprised of one or more members;

(24) "Review team captain" means that member of a review team who is responsible for the review and supervises the other members of the team;

(25) "Reviewer" means a member of a review team including the review team captain;

(26) "SQR Advisory Committee" means the State Quality Review Advisory Committee to the Board; and

(27) "SQR Program" means the State Quality Review Program of the North Carolina State Board of Certified Public Accountant Examiners.

Statutory Authority G.S. 93-1; 93-12(8c).

.0312 RESERVED FOR FUTURE CODIFICATION

.0313 RESERVED FOR FUTURE CODIFICATION

.0314 RESERVED FOR FUTURE CODIFICATION

.0315 NEW FIRM, ONGOING FIRM

(a) When the members of a firm elect to divide the firm such that two or more firms are created, one firm may be the ongoing firm and the other firms may be new firms, or all may be new firms. The ongoing firm, if any, is the firm the members of which represent more than 50 percent of the ownership of the predecessor firm prior to the division.

(b) When two or more firms merge, the resulting firm may be an ongoing firm (successor to one of the predecessor firms) or it may be a new firm. The resulting firm is an ongoing firm if any percentage of ownership greater than 50 percent of one of the predecessor firms end up owning a percentage of the resulting firm greater than 50 percent.

(c) For purposes of this Rule, "percentage of ownership" refers to the percentage of the firm owned aggregately by the group of firm members in question. Percentage of ownership is determined based upon the number of shares held by the group if the firm is incorporated or, if the firm is a partnership, the percentage of capital owned by the group.

(d) A change in an entity's form (for example, incorporation of what was a partnership) does not create a new firm. A new firm is not created by the addition of a member(s) not acquiring a percentage of ownership greater than 50 percent. Neither is a new firm created by the loss of a member(s) by retirement or death, provided the

remaining members have purchased or are purchasing the retired or deceased members' ownership, regardless of whether the retired or deceased member(s) owned more than 50 percent of the firm.

Note: The following examples illustrate this Rule:

- (1) Firm A splits into B and C. While A was in existence, its members and the respective percentage of ownership of those members were: Smith, 30 percent; Jones, 30 percent; and Wesson, 40 percent. Smith and Jones form firm B and Wesson practices solo in firm C. Since Smith and Jones owned 60 percent of firm A, firm B will be the ongoing firm. Wesson's firm C is a new firm.
- (2) If all the partners in the previous example had gone their separate ways, all three firms would have been new firms.
- (3) The firm of Miller and Link merges with the firm of Thomas and Calaber. Each predecessor firm had two partners. It is agreed that Miller and Link will each own 26 percent of the resulting firm. Therefore, aggregately, they will own 52 percent of the resulting firm. The resulting firm is the successor firm to Miller and Link, and therefore an ongoing firm, because Miller and Link aggregately owned a percentage greater than 50 percent of their old firm (100 percent) and now aggregately own a percentage greater than 50 percent of the resulting firm (52 percent).
- (4) If three two-partner firms merge and each new partner receives 1/6 of the ownership of the resulting firm, the resulting firm is a new firm, because, although each set of previous partners owned 100 percent of their old firm, no set of previous partners owns a percentage of the new firm greater than 50 percent.

Statutory Authority G.S. 93-1; 93-12(8c).

SUBCHAPTER 8F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

.0105 PASSING GRADES

(a) The following provisions apply to all persons who apply to take the examination for the first time prior to the examination scheduled for May 1994:

- (1) ~~(a)~~ A candidate subject to examination in all subjects who receives a grade of 75 or higher in each of the four subjects of the examination shall have passed the examination.
- (2) ~~(b)~~ A candidate who is subject to examination in all subjects of the examination and who receives a grade of 75 or higher in two or more subjects or the single subject of accounting practice shall receive credit for the subjects in which he receives a grade of 75 or higher and shall have the right to be re-examined in only the remaining subject or subjects.
- (3) Effective with the May 1994 examination:
 - (A) A candidate who has been awarded conditional credit for the accounting practice section shall be awarded conditional credit for the proposed accounting and reporting section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.
 - (B) A candidate who has been awarded conditional credit for either the auditing or the business law (renamed business law and professional responsibilities) section, or both, shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.
 - (C) A candidate who has been awarded conditional credit for the accounting theory section shall be awarded conditional credit for the proposed financial accounting and reporting section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.
- (4) ~~(c)~~ A candidate receiving conditional credit initially as provided for under ~~Paragraph~~ ~~(b)~~ Subparagraphs (2) and (3) of Paragraph ~~(a)~~ of this Rule shall retain credit for a period of not more than five succeeding examinations offered by the Board provided that, for the period during which an applicant who was or is in active military service any time subsequent to receiving conditional credit, only those examinations for which that applicant has applied and has been approved shall be considered as succeeding examinations.
- (5) ~~(d)~~ On any re-examination, a conditional candidate shall retain credit for each additional subject passed for a period of not more than the five succeeding examinations offered by the Board.

(b) The following provisions apply to all persons who apply to take the examination for the first time beginning with the May 1994 examination:

(1) A candidate shall be required to pass all sections of the examination with a grade of 75 or higher.

(2) At a given sitting of the examination, if a candidate passes two or more, but not all sections, then the candidate shall be given credit for those sections that he has passed, and need not sit for re-examination in those sections, provided that:

(A) the candidate takes all sections of the examination at that sitting; and

(B) the candidate attains a minimum grade of 50 on each section not passed at that sitting.

(3) At each subsequent sitting, candidates who have received conditional credit as provided for under Subparagraph (2) of Paragraph (b) of this Rule shall be required to:

(A) take all sections not yet passed; and

(B) attain a minimum grade of 50 on sections taken but not passed at such sitting.

(4) A candidate receiving conditional credit initially as provided for under Subparagraphs (2) and (3) of Paragraph (b) of this Rule shall retain credit for a period of not more than the six succeeding examinations offered by the Board provided that, for the period during which an applicant who was or is in active military service any time subsequent to receiving conditional credit, only those examinations for which that applicant has applied and has been approved shall be considered as succeeding examinations.

(5) On any re-examination, a conditional candidate shall retain credit for each additional subject passed for a period of not more than the six succeeding examinations offered by the Board.

(c) The Board may in particular cases waive or defer any of the requirements of Paragraphs (a) and (b) of this Rule regarding the circumstances in which the various parts of the examination must be passed, upon a showing that, by reason of circumstances beyond the candidate's control, he was unable to meet such requirement.

Statutory Authority G.S. 93-12(3); 93-12(5).

SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0200 - RESPONSIBILITIES TO CLIENTS AND COLLEAGUES

.0204 CONFIDENTIAL CLIENT INFORMATION

(c) It is not a violation of this Rule to disclose confidential client information necessary for the SQR process or for any valid quality review program.

Statutory Authority G.S. 55B-12; 93-12(8c); 93-12(9).

SECTION .0300 - OTHER RESPONSIBILITIES

.0305 NAME OR STYLE OF A PRACTICE

(a) A firm engaged in the public practice of accounting may not use any false or misleading name, title, or reference in its name or associated with its name.

(b) It is considered misleading if a firm practices ~~A CPA shall not practice~~ under a name or style which would tend to imply the existence of a partnership or a professional corporation or an association when in fact there is no partnership nor is there more than one shareholder in the firm. For example, no firm having just one owner may have as a part of its name the words "associates" or "company" or their abbreviations.

Statutory Authority G.S. 55B-5; 93-12(9).

.0306 FIRM NAME OR STYLE OF A PRACTICE (REPEALED)

Statutory Authority G.S. 55B-5; 93-12(9).

.0310 PRACTICE THROUGH A NON-COMPLYING FIRM PROHIBITED

(a) A CPA shall not engage in the public practice of accountancy through a firm which is in violation of the registration requirements of 21 NCAC 8J .0008, 8J .0010 or the SQR requirements of 21 NCAC 8M .0102.

(b) If a firm fails to comply with any part of 21 NCAC 8J .0008, 8J .0010 or 8M .0102, the Board may take disciplinary action against the firm's members. Such discipline may include but is not limited to:

(1) a conditional license upon such conditions as the Board may deem appropriate for the first 60 days of non-compliance;

(2) a conditional license and one hundred dollars (\$100.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;

- (3) a suspension of each member's CPA certificate for a period of not less than 30 days for non-compliance in excess of 120 days.

Statutory Authority G.S. 55B-12; 93-12(8c); 93-12(9).

.0311 FALSIFICATION IN CONNECTION WITH QUALITY REVIEW PROGRAMS

A CPA shall not falsify a review, report, or any required program or checklist of any quality review program.

Statutory Authority G.S. 93-12(9).

.0312 QUALITY REVIEW STANDARDS

A CPA who is engaged to perform a quality review shall not violate the rules or standards of the quality review program under which the review is made.

Statutory Authority G.S. 93-12(9).

SUBCHAPTER 8H - RECIPROCITY

.0005 USE OF CPA TITLE

(c) Out-of-state CPAs neither domiciled nor employed in North Carolina may enter the state for the sole purpose of performing a peer review or quality review for a North Carolina licensee and shall not be required to secure a temporary permit to conduct said engagement.

Statutory Authority G.S. 93-1.

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0003 REPORTS AND ANNUAL REGISTRATION OF OFFICES AND PARTNERSHIPS (REPEALED)

Statutory Authority G.S. 93-12(9).

.0007 MAILING ADDRESSES OF CERTIFICATE HOLDERS AND FIRMS

All certificate holders and firms shall notify the Board in writing within ~~20~~ 30 days of any change in address or business location.

Statutory Authority G.S. 55B-12; 93-12(7b); 93-12(9).

.0008 FIRM REGISTRATION

(a) Upon opening a North Carolina office and annually thereafter by December 31, non-incorporated CPA firms, whether sole proprietorships or partnerships, which have of-

ices both within and outside the state of North Carolina must register with the Board.

(b) Such firms shall register with the Board by:

(1) filing with the Board office all forms required by 21 NCAC 8J .0003; and

(2) paying the registration fee for multi-state non-incorporated firms.

(c) The registration fee for each multi-state, non-incorporated firm shall be determined by multiplying the number of owners in the firm by ten dollars (\$10.00) if the number of owners in the firm is less than 250. However, if the number of owners in the firm is 250 or greater, the fee will be two thousand five hundred dollars (\$2,500).

(a) All CPA firms must register with the Board within 30 days after opening a North Carolina office or beginning a new firm unless they are to be incorporated, in which case they must register prior to incorporation pursuant to 21 NCAC 8K .0104.

(b) In addition to the initial registration required by Paragraph (a) of this Rule, all CPA firms must register annually by January 31 with the Board upon forms provided by the Board.

(c) The information provided by the registration shall include:

(1) Either an application for exemption from SQR, a request to be deemed in compliance with SQR or registration for SQR, pursuant to 21 NCAC 8M .0102 and .0104;

(2) For all firms not exempt from the SQR program, with the registration immediately following its review, the affidavit required by 21 NCAC 8M .0102(d);

(3) For all North Carolina offices, an office registration form indicating the name of the office supervisor, the location of the office and its telephone number;

(4) For all partnerships, a list of all resident and nonresident partners of the partnership and their percentage of ownership as set forth in 21 NCAC 8A .0315;

(5) For all incorporated firms, the information set forth in 21 NCAC 8K .0104(d); and

(6) For all firms, the appropriate registration fees as set forth in 21 NCAC 8J .0010.

(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the "year-end".

(e) With regard to Paragraph (c)(3) of this Rule, one representative of a firm may file all documents with the Board on behalf of the firm's offices in North Carolina. However, responsi-

bility for compliance with this Rule will remain with each office supervisor.

(f) With regard to Paragraph (c)(4) of this Rule, one annual listing by a representative of the partnership shall satisfy the requirement for all partners of the firm. However, each partner shall remain responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) of this Rule shall be construed to mean that no partnership exists.

(g) Notice that a firm has dissolved and any change in the information required by Paragraph (c)(3) and (4) of this Rule must be delivered to the Board's office within 30 days after the change or dissolution occurs.

(h) If a firm fails to comply with any part of this Rule, the Board may, in its discretion and for good cause shown, grant the firm a conditional registration for a period of 60 days or less within which the firm must comply with the provisions of this Rule. The Board may grant a second further extension under extenuating circumstances.

Statutory Authority G.S. 55B-10; 55B-12; 93-12(8a); 93-12(8c).

.0009 RESERVED FOR FUTURE CODIFICATION

.0010 REGISTRATION FEES

The annual registration fees shall be as follows:

- (1) For exemption from SQR, ten dollars (\$10.00);
- (2) For participation within SQR or for a request to be deemed in compliance with SQR, seventy-five dollars (\$75.00) plus five dollars (\$5.00) for each additional North Carolina office of the firm not excused from SQR by 21 NCAC 8M .0204;
- (3) For all incorporated firms, twenty-five dollars (\$25.00); and
- (4) For all non-incorporated firms which have offices both within and outside the state of North Carolina, whether sole proprietorships or partnerships, an amount equal to two thousand five hundred dollars (\$2,500.00) or the number of owners of the firm multiplied by ten dollars (\$10.00), whichever is less.

Statutory Authority G.S. 55B-11; 55B-12; 93-12(7b); 93-12(8a); 93-12(8c).

SUBCHAPTER 8K - PROFESSIONAL CORPORATIONS

SECTION .0100 - GENERAL PROVISIONS

.0104 REGISTRATION AND RENEWAL

(c) Prior to December 31 of each year, In addition to its initial registration, every CPA corporation, whether domestic or foreign, must renew its registration with the Board by submitting to the Board's office:

- (1) a properly completed professional corporation annual registration form; and
 - (2) a fee of twenty five dollars (\$25.00).
- must register annually pursuant to 21 NCAC 8J .0008.

(d) The applications application for registration and the registration renewal application when completed by a CPA corporation shall each provide the following information:

- (1) the name and address of the professional corporation;
- (2) the address of each office operated or maintained by the corporation;
- (3) the names and addresses of all the officers, directors, and shareholders; and officers and directors;
- (4) the names and addresses of all the shareholders and their percentage of ownership as set forth in 21 NCAC 8A .0315(c); and
- (5) (4) the names and addresses of all the employees of the corporation licensed by the Board under the provisions of Chapter 93 of the General Statutes of North Carolina.

Statutory Authority G.S. 55B-11; 93-8; 93-12(7b); 93-12(8c).

.0105 SUPPLEMENTAL REPORTS

(b) Within 30 days after any change occurs, In addition to the supplemental reports required by 21 NCAC 8J .0008(g), professional corporations registered with the Board pursuant to G.S. 55B shall report any changes in the composition or identity of shareholders, officers, directors or CPA employees. They shall file a certified copy of all amendments to the articles of incorporation within 30 days after the effective date of each amendment. They shall also file a copy of any amendment to the by-laws, certified to be a true copy by the secretary or an assistant secretary of the corporation, within 30 days after adoption of the amendment.

Statutory Authority G.S. 55B-12; 93-12(3).

SUBCHAPTER 8M - STATE QUALITY REVIEW PROGRAM

SECTION .0100 - GENERAL SQR REQUIREMENTS

.0101 PURPOSE

The Board has adopted a state quality review (SQR) program to help CPA professionals in the public practice of accountancy maintain the quality of their audit, review and compilation services. Participation in the program does not, however, guarantee or warrant that any services rendered by the reviewed firm do or will comply with the applicable professional standards.

Statutory Authority G.S. 93-12(8c).

.0102 REGISTRATION REQUIREMENTS

(a) A firm which has not performed any audits, reviews or compilations during the 12 months prior to the year-end of the registration required by 21 NCAC 8J .0008(a) and (b) shall be exempt from the SQR program for the 12 months following the year-end but not from registering with the Board.

(b) Unless exempt under Paragraph (a) of this Rule, each ongoing firm must complete an SQR within 12 months following the year-end of each registration unless it has completed an SQR within 24 months prior to the year-end.

(c) Unless exempt under Paragraph (a) of this Rule, a new firm shall complete its initial SQR within 24 months of the date of its initial registration pursuant to 21 NCAC 8J .0008(a).

(d) Every firm not exempt from SQR by Paragraph (a) of this Rule, after completion of a quality review, must procure an affidavit signed by the review team captain stating that the firm has completed an SQR or one of the review programs listed or referred to in 21 NCAC 8M .0104. The firm shall submit the affidavit with the annual registration following the review as set forth in 21 NCAC 8J .0008(c)(2).

(e) For purposes of this Rule, an SQR is complete when the review team has delivered its report required by 21 NCAC 8M .0307 to the reviewed firm. Any quality review other than SQR is complete when the review team has delivered its final report to the reviewed firm. If mailed, a report shall be deemed delivered when postmarked.

Note: For example, firm C was incorporated on June 1, year one. During that year it performed accounting and auditing services and, therefore, was not exempt from the SQR program. It continued to do auditing and accounting work for the next three years (years two, three and four) but it did not do any audits, reviews, or compilations in years five and six. In year seven, the firm completed several compilations but, in year eight, it did not issue any audits, reviews, or compilations. In year nine, the corporation dissolved, at which time it notified the Board of its dissolution pursuant to 21 NCAC 8J .0008(g).

The following chart shows the history of firm C as it relates to the SQR program, SQR fees it was required to pay pursuant to 21 NCAC 8J .0010, and when and why it was required to complete an SQR pursuant to this Rule.

Year	Audits, Reviews or Compilations Performed	Fee
1	Yes	SQR Fee
2	Yes	SQR Fee
3	Yes	SQR Fee
4	Yes	SQR Fee
5	No	Exempt Fee
6	No	Exempt Fee
7	Yes	SQR Fee
8	No	Exempt Fee
9	Yes	No Fee

**Completion of SQR
Required and Rationale**

A new firm has 24 months to complete SQR - 21 NCAC 8M .0102(c); the firm is required to complete SQR before June 1, year 3.

Completes SQR on May 15, year 3 (within 24 months of its inception) - 21 NCAC 8M .0102(c).

Not required to complete SQR in year 5 because the firm completed SQR on May 15, year 3

(within 24 months of year-end of year 4) - 21 NCAC 8M .0102(b).

Will not be required to complete SQR in year 6 because it is exempt - 21 NCAC 8M .0102(a).

Not required to complete SQR in year 7 because it is exempt - 21 NCAC 8M .0102(a).

Will be required to complete SQR in year 8 because it has not completed SQR within 24 months of year-end of year 7 (last SQR was completed May 15, year 3) - 21 NCAC 8M .0102(b).

Completes SQR pursuant to its registration in year 7 - 21 NCAC 8M .0102(b).

Not required to register or pay a fee at year-end of year 9 because firm dissolved during year 9 and properly notified the Board - 21 NCAC 8J .0008(g).

Statutory Authority G.S. 93-12(7b); 93-12(8c).

.0103 PROHIBITION OF ABUSE

Firms may not rearrange their structure or act in any other manner in order to avoid participating in SQR.

Note: For example, two years after its inception, the two-partner firm of Wolf and Calder changes its name to Calder and Wolf and rearranges its capital ownership slightly so that Calder now owns 60 percent, whereas when the firm first began Wolf owned 60 percent of the firm. The Board would not recognize the firm of Calder and Wolf as a new firm and would require it to undergo SQR that year rather than in another two years. See 21 NCAC 8M .0102(b) and (c).

Statutory Authority G.S. 93-12(8c).

.0104 FIRMS DEEMED IN COMPLIANCE

(a) Firms which have participated in one of the review programs set forth in either Paragraph (b) of this Rule or the list referred to in Paragraph (c) of this Rule, rather than SQR, within the applicable time period prescribed by 21 NCAC 8M .0102(b) and (c) are deemed to be in compliance with the SQR program.

(b) The following quality review programs are found by the Board to be of the type required by the Board in its SQR program:

- (1) AICPA SECPS division for CPA firms.
- (2) AICPA PCPS division for CPA firms, and
- (3) AICPA Quality Review Program.

(c) Other quality review programs may be of the type required by the Board in its SQR pro-

gram. A list of such programs will be maintained at the Board offices and mailed to any firm upon request.

(d) Pursuant to G.S. 93-12(8c), a firm which contemplates undergoing a quality review program other than the SQR program or those listed or referred to in Paragraphs (b) and (c) of this Rule may request a determination from the Board whether the quality review program is of the type required by the Board in the SQR program. The firm shall supply all information requested of it by the Board and, within two months of the month all information requested has been received by the Board, the Board shall make its determination and notify the firm.

Statutory Authority G.S. 93-12(8c)(e).

- SECTION .0200 - DUTIES OF THE REVIEWED FIRM

.0201 SELECTION OF ENGAGEMENTS TO BE REVIEWED

(a) Each office of the reviewed firm not excused under 21 NCAC 8M .0204 shall select a set of three engagements to be submitted for review.

(b) A set of engagements for review shall include the accountant's report and financial statements for one audit, one review, and one compilation, if these three levels of service have been performed by the office within the 12 months preceding the year-end.

(1) If one or more levels of service have not been performed, the office shall select reports of the next highest level of service for a total of three reports submitted.

(2) If, of the three levels of service, only compilations have been performed by the office, the set of three engagements shall include at least one compilation report on a complete set of financial statements which includes disclosures and one compilation report on a financial statement where management has elected to omit substantially all of the disclosures normally required by generally accepted accounting principles set forth in 21 NCAC 8G .0102, if both types of compilations are performed.

(c) The set of engagements, if possible, shall include clients operating in different industries. For example, submission of one governmental audit, one manufacturing review and one contractor compilation would satisfy this requirement.

Statutory Authority G.S. 93-12(8c).

.0202 NOTICE TO CLIENTS

The participating firm may advise its clients that it will participate in a quality review required by the Board and that the client's accounting or auditing work may be part of the review process.

Statutory Authority G.S. 93-12(8c).

**.0203 RESERVED FOR FUTURE
CODIFICATION**

.0204 CERTAIN OFFICES EXCUSED

The following offices of participating firms are not required to participate in the SQR program:

- (1) offices which are not North Carolina offices, and
- (2) North Carolina offices which have not performed any audits, reviews or compilations for the 12 months prior to the year-end set forth in 21 NCAC 8J .0008.

Statutory Authority G.S. 93-12(8c).

**.0205 RESERVED FOR FUTURE
CODIFICATION**

.0206 SELECTION OF A REVIEW TEAM

(a) A participating firm shall select the review team which will perform the firm's SQR.

(b) It is the participating firm's responsibility to see that the review team is qualified under 21 NCAC 8M .0301 and engaged to perform the review in accordance with the standards for the performance of SQR set forth in 21 NCAC 8M .0302 - .0307.

Statutory Authority G.S. 93-12(8c).

.0207 DUTY TO RESPOND TO QUESTIONS

(a) The participating firm shall respond promptly to questions raised during the review process by any member of the review team, whether oral or written.

(b) The participating firm shall respond in writing to questions raised by the SQR report required by 21 NCAC 8M .0307 within 30 days from the date the report is delivered to it. The letter of response shall be addressed to the SQR Committee and a copy sent to the review team captain.

Statutory Authority G.S. 93-12(8c).

**SECTION .0300 - REVIEW TEAM:
QUALIFICATIONS AND DUTIES**

**.0301 QUALIFICATIONS OF REVIEWERS
AND TEAM CAPTAINS**

(a) A reviewer must be a CPA on active status licensed in any state of the United States, be in

good standing with the CPA boards by which (s)he is licensed, possess current knowledge of the code of professional ethics and conduct, and possess current knowledge of the accounting and auditing standards applicable to the engagements to be reviewed by him/her. However, (s)he need not possess knowledge of the applicable accounting and auditing standards with regard to every engagement involved in the review, unless (s)he is the only member of a review team.

(b) A reviewer shall not have been disciplined for violation of 21 NCAC 8G .0311 or .0312 within the five years preceding the date the review engagement is entered.

(c) The review team captain:

- (1) must have five years' experience or more as a CPA in the accounting and auditing function;
- (2) must be a member or employee of a firm which has completed an SQR or other quality review listed or referred to in 21 NCAC 8M .0104 within the last three years but which has not received an adverse report on its most recent quality review;
- (3) must be a manager (or the equivalent) within his/her firm; and
- (4) must have day-to-day involvement in auditing and accounting procedures which is sufficiently comprehensive to enable him/her to perform and oversee the SQR with professional expertise.

Statutory Authority G.S. 93-12(8c).

**.0302 INDEPENDENCE FROM A REVIEWED
FIRM**

(a) A reviewer shall be independent with respect to the reviewed firm.

(b) Independence is impaired if a reviewer:

- (1) performs an SQR of a firm which performed the most recent quality review of the reviewer's firm;
- (2) performs an SQR of a firm an employee or member of which performed or participated in the performance of the most recent quality review of the reviewer's firm; or
- (3) has any direct or indirect financial interest in a reviewed firm's client and reviews engagement performed for that client.

(c) Paragraph (b) of this Rule does not include all instances where a reviewer's independence would be impaired. In considering whether independence is impaired, the reviewer shall consider the effect of family and other relationships and the possible appearance of loss of independence as a result of those relationships.

Statutory Authority G.S. 93-12(8c).

.0303 CONFLICT OF INTEREST

(a) A reviewer shall not have a conflict of interest with respect to the reviewed firm or the clients whose engagements are selected for review.

(b) A reviewer shall avoid contacts with the reviewed firm's clients or personnel that could be asserted to be evidence of a conflict of interest.

Statutory Authority G.S. 93-12(8c).

**.0304 PERFORMING THE REVIEW -
REVIEWER'S DUTIES**

(a) The objective of the review shall be to determine that the financial statements and related accountant's report on the audit, review and/or compilation engagements submitted for review do not depart in a material respect from the requirements of professional standards set forth in 21 NCAC 8G .0201 - .0203 and 8G .0208 - .0212.

(b) The review team shall read the financial statements submitted by the participating firm and the accountant's audit, review or compilation report thereon.

(c) The review team must determine whether each of the accountant's report and financial statements conform with the applicable professional standards set forth in 21 NCAC 8G .0201 - .0203 and 8G .0208 - .0212.

(d) Before issuing its SQR report pursuant to 21 NCAC 8M .0307, the review team may raise questions with the participating firm either orally or in written form to resolve questions which come to their attention during a review.

(e) The review team shall document the work performed using programs and checklists which provide a reasonable basis for their SQR report.

(f) A review team shall not issue an SQR report, pursuant to 21 NCAC 8M .0307, unless it has complied with the applicable review standards and requirements.

Statutory Authority G.S. 93-12(8c).

.0305 CONFIDENTIALITY

Information concerning the participating firm or its clients or personnel that is obtained as a consequence of the review is confidential and must not be disclosed to anyone not involved in the SQR process.

Statutory Authority G.S. 93-12(8c).

.0306 DUE PROFESSIONAL CARE

A reviewer must exercise due professional care in performing and reporting on an SQR.

Statutory Authority G.S. 93-12(8c).

.0307 REPORTING REQUIREMENTS

(a) The review team shall deliver an SQR report and the affidavit required by 21 NCAC 8M .0102(d) to the participating firm within 60 days after all of the engagements which are to be reviewed have been delivered to it. Beginning January 1, 1996, the review team shall also deliver its SQR report to the SQR Advisory Committee by the same date.

(b) The SQR report and a letter of comment, if any, shall be written and issued on the letterhead of the team captain's firm and shall either be unmodified, modified, or adverse.

(c) It is suggested that a letter of comment be issued if the report is modified or adverse. The letter of comment should provide reasonably detailed recommendations for remedial, corrective actions by the participating firm so that the SQR Committee can evaluate whether the firm's response to significant deficiencies noted in the review is a positive one, consistent with the objectives of the SQR program, and whether the actions taken or planned by the participating firm appear appropriate in the circumstances.

(d) The SQR report shall describe the limited scope of the review and shall not express an opinion or any form of assurance about the reviewed firm's quality control policies and procedures for its accounting practice. It shall state whether anything came to the attention of the review team which caused them to believe that any of the engagements submitted for review did not conform with the requirements of professional standards in all material respects and, if applicable, describe the general nature of significant departures from those standards.

(e) An unmodified report includes the review team's conclusion that nothing came to its attention that caused its members to believe that the engagements submitted for review did not conform with the requirements of professional standards in all material respects.

(f) A modified report includes the review team's conclusion that nothing came to its attention that caused its members to believe that the engagements submitted for review did not conform with the requirements of professional standards in all material respects with the exception of certain reservations which are noted in the report.

(g) An adverse report includes the review team's conclusion that the participating firm did not have reasonable assurance of conforming

with professional standards in the conduct of its accounting practice during the year under review.

Statutory Authority G.S. 93-12(8c).

SECTION .0400 - SQR ADVISORY COMMITTEE

.0401 SQR ADVISORY COMMITTEE - MEMBERS AND DUTIES

(a) The SQR Advisory Committee shall consist of six CPAs appointed by the Board and one Board member appointed by the Board's President.

(b) The SQR Committee shall:

- (1) review all initial firm registrations submitted to the Board pursuant to 21 NCAC 8J .0008(a);
- (2) review all affidavits submitted by review team captains to the reviewed firm pursuant to 21 NCAC 8M .0102(d) and submitted to the Board pursuant to 21 NCAC 8J .0008(c)(2);
- (3) beginning January 1, 1996, review all modified and adverse SQR reports and letters of comments, if any, submitted by review team captains under the SQR program;
- (4) consider all objections filed pursuant to 21 NCAC 8M .0402(a); and
- (5) make recommendations to the Board consistent with these Rules concerning each of Subparagraphs (b)(1) through (4).

(c) Prior to making any recommendations to the Board, the Committee shall give notice of its proposed recommendation to the firm to which the recommendation pertains.

(d) The Committee shall also recommend remedial action to participating firms receiving modified or adverse reports which, if followed, could increase the participating firm's ability to perform quality services in the public practice of accounting.

(e) The Committee shall report at least annually to the Board on its activities and, further, at any time the Board requests a special report.

Statutory Authority G.S. 93-12(2); 93-12(8c).

.0402 OBJECTIONS TO-SQR ADVISORY COMMITTEE

(a) A participating firm may file an objection with the SQR Advisory Committee with regard to an SQR report within 30 days from the date the report is delivered pursuant to 21 NCAC 8M .0307(a). In any other matter before the Committee, a firm to which a proposed recommendation pertains may file an objection within 30 days from notice of the Committee's recommendation.

(b) All objections shall be in writing and shall be addressed to the Committee at the Board's address set forth in 21 NCAC 8A .0102. Objections are filed when received by the Board.

(c) An objection concerning an SQR report shall contain:

- (1) the name of the reviewed firm;
- (2) the name of the review team captain;
- (3) the date the review was completed;
- (4) the conclusions made in the report to which the participating firm objects; and
- (5) in sufficient detail, the participating firm's reasons for objecting to the report's conclusions.

(d) Objections to proposed recommendations of the Committee shall identify the proposed recommendation and shall state the firm's reasons for disagreeing with the Committee's proposed recommendation in sufficient detail.

Statutory Authority G.S. 93-12(2); 93-12(8c).

.0403 REVIEW OF PROTEST

(a) Within 60 days of receiving an objection from a firm, the SQR Advisory Committee shall render its determination in response to the objection. It may, in its discretion, propose to recommend to the Board that the SQR report be amended or alter the recommendation it has proposed to make to the Board.

(b) During its review of any matter raised by an objection, the SQR Advisory Committee may gather information (including any review team's work papers, checklists, and all other information submitted to a review team by a participating firm) and conduct interviews, including interviews of members of a review team and/or the objecting firm.

(c) If the firm and the Committee are unable to resolve the matter informally, the Committee shall submit its recommendation to the Board with notice to the objecting firm. The objecting firm then has 30 days from such notice to object to such recommendation by filing an objection with the Board. The objection shall comply with the requirements of 21 NCAC 8M .0402(d) and is filed when received by the Board.

(d) The Board shall review the recommendation of the Committee and the objection and then, if the matter is not resolved informally, the Board may set the matter for hearing pursuant to Article 3A of G.S. 150B.

Statutory Authority G.S. 93-12(2); 93-12(8c); 150B-2(2); 150B-41(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Midwifery Joint Committee intends to adopt rule(s) cited as 21 NCAC 33 .0006.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 9:30 a.m. on December 3, 1990 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of the testimony. Written statements may be directed five days prior to the hearing date to the Midwifery Joint Committee, P. O. Box 2129, Raleigh, NC 27602.

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

.0006 NURSE MIDWIFE APPLICANT STATUS

(a) The Nurse Midwife Applicant status may be granted by the Midwifery Joint Committee to a registered nurse who meets all of the following stipulations:

- (1) has graduated from a nurse midwifery education program which meets the criteria of the American College of Nurse Midwives for graduates to seek certification;
- (2) has applied to take or is waiting for results of the certification exam; and
- (3) whose application for approval as a certified nurse midwife has been received by the Midwifery Joint Committee.

(b) Nurse midwife applicant status may not exceed a period of six months beyond date of completion of nurse midwifery education program or until notice of certification is received, whichever ever occurs first.

(c) A nurse midwife applicant, described in Paragraph (a) of this Rule, may function before being approved as a certified nurse midwife in accordance with 21 NCAC 33 .0004 and 21 NCAC 33 .0005, and with the following limitations:

- (1) wear identification as a "Nurse Midwife Applicant";
- (2) have no prescribing privileges;
- (3) have no remote practice sites;
- (4) perform his/her duties only in situations where the supervising physician is phys-

ically present in the practice site in which the applicant is working; and

- (5) have immediate physician countersigning of all medical notations in all patient charts in all practice locations.

(d) In the event the individual leaves the job in which he/she has worked as a nurse midwife applicant before approval as a certified nurse midwife is granted, the individual must submit a written explanation to the Midwifery Joint Committee before he/she may apply to work in the nurse midwife applicant status in another job.

(e) The nurse midwife applicant status does not apply to an individual previously approved as a certified nurse midwife by the Midwifery Joint Committee in another practice situation which has terminated and who is seeking approval in a new job.

(f) Once the new application has been received by the Midwifery Joint Committee, the previously approved certified nurse midwife may function prior to approval of the new job as follows:

- (1) wear identification as a "Certified Nurse Midwife";
- (2) use prescribing number previously issued by the Board for prescribing privileges;
- (3) have physician countersigning of all medical notations in all patient charts in all practice locations within 24 hours of Certified Nurse Midwife/patient contact.

Statutory Authority G.S. 90-178.2; 90-178.5.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Nursing intends to adopt rules cited as 21 NCAC 36 .0501 - .0507.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 3:00 p.m. on December 6, 1990 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written statements may be directed five days prior to the hearing date to the North

Carolina Board of Nursing, P.O. Box 2129,
Raleigh, NC 27602.

CHAPTER 36 - BOARD OF NURSING

SECTION .0500 - PROFESSIONAL CORPORATIONS

.0501 AUTHORITY AND DEFINITIONS

(a) Chapter 55B of the General Statutes of North Carolina, the "Professional Corporation Act," authorizes the North Carolina Board of Nursing to adopt regulations for professional corporations whose purpose is the provision of nursing related services.

(b) The rules in this Section supplement the basic statutory law governing professional corporations and shall be interpreted so as not to conflict with such statutory law, as it may be amended from time to time, or with other statutes and laws governing corporations generally.

(c) "Board" means the North Carolina Board of Nursing.

(d) "Nursing Related Services" means those activities through which nursing, as defined in G.S. 90-171.20(4), is practiced.

(e) "Licensee" means any individual who is duly licensed to practice nursing in North Carolina as a registered nurse.

(f) "Professional Corporation" means professional corporations organized for the purpose of providing nursing related services in North Carolina.

(g) "Director" means the Executive Director of the North Carolina Board of Nursing.

(h) "Assistant" means the Administrative Assistant to the Executive Director of the North Carolina Board of Nursing.

Statutory Authority G.S. 55B-2; 55B-12; 90-171.20.

.0502 NAME OF PROFESSIONAL CORPORATION

The following requirement, in addition to the provisions of Chapter 55B, the Professional Corporation Act of North Carolina, must be met regarding the corporate name:

The name of the professional corporation referred to herein shall not include any adjectives or words not in accordance with ethical customs of the nursing profession.

Statutory Authority G.S. 55B-5; 55B-12; 90-171.43.

.0503 PREREQUISITES FOR INCORPORATION

The following requirements must be met in order to incorporate:

- (1) The incorporator, whether one or more, of a professional corporation shall be duly licensed to practice nursing in North Carolina as a registered nurse.
- (2) Before the filing of the articles of incorporation with the Secretary of State, the incorporators shall file, with the assistant to the Board, the original articles of incorporation, plus a copy, together with a registration fee of fifty dollars (\$50.00).
- (3) The original articles of incorporation and the copy shall be accompanied by an application to the Board (Corp. Form 1) certified by all incorporators, setting forth the names, addresses, and certificate numbers of each shareholder of said corporation who will be practicing nursing for said corporation.
- (4) Included with the above shall be a statement that all such persons are duly licensed to practice nursing in North Carolina as a registered nurse, and stating that the corporation will be conducted in compliance with the Professional Corporation Act and these Regulations.
- (5) If the articles are changed in any manner before being filed with the Secretary of State, they shall be re-submitted to the assistant of the Board and shall not be filed with the Secretary of State until approved by the assistant of the Board.

Statutory Authority G.S. 55B-4; 55B-12; 90-171.20(6).

.0504 CERTIFICATE OF REGISTRATION

The Certificate of Registration shall be issued as follows:

- (1) The Director or Assistant shall issue a Certificate of Registration (Corp. Form 2) for the professional corporation to become effective only when the professional corporation files the articles of incorporation with the Secretary of State and if:
 - (a) the Director or Assistant of the Board finds that no disciplinary action, civil or criminal legal action, is pending against any of the licensed incorporators or persons who will be directors, officers, or shareholders of such corporation; and
 - (b) it appears to her that such corporation will be conducted in compliance with the law and regulations.
- (2) The proposed original articles of incorporation, and the Certification of Registration, will be returned to the incorporators for filing with the Secretary of State. The copy

of the articles and a copy of the certification will be retained in the office of the assistant. If the required findings cannot be made, the registration fee shall be refunded to the incorporators.

- (3) The initial Certificate of Registration shall remain in effect until December 31, of the year in which it was issued unless suspended or terminated as provided by law. The Certificate of Registration shall be renewed annually thereafter.
- (4) At least 20 days prior to the date of expiration of the certificate, the corporation shall submit its written application for renewal upon a form as provided by the Board (Corp. Form 3), said application to be accompanied by check in the amount of twenty-five dollars (\$25.00) in payment of the renewal fee.

Statutory Authority G.S. 55B-12; 90-171.20(6).

.0505 GENERAL AND ADMINISTRATIVE PROVISIONS

The following general provisions shall apply to all incorporating professional associations:

- (1) If the Director or Assistant should decline to issue a Certificate of Registration required by 21 NCAC 36 .0504 (a)(1), or decline to renew the same when properly requested, or shall refuse to take any other action required of him/her in writing by a professional corporation, the aggrieved party may request, in writing, a review of such action by the Board, and the Board shall provide a formal hearing for such aggrieved party before a majority of the Board and such hearing shall be at the expense of the aggrieved party.
- (2) All amendments to charters of professional corporations, all merger and consolidation agreements to which a professional corporation is a party, and all dissolution proceedings and similar changes in the corporate structure of a professional corporation shall be filed with the Director or Assistant of the Board for approval before being filed with the Secretary of State. A true copy of the changes filed with the Secretary of State shall be filed with the assistant of the Board within ten days after the same are filed with the Secretary of State.
- (3) The Director or assistant is authorized to issue the certificate (Corp. Form 4) required by G.S. 55B-6 when stock is transferred in a professional corporation, and such certificate shall be permanently attached to the stub of the transferee's certificate in the stock

book of the professional corporation. The fee for such certificate shall be five dollars (\$5.00) for each name included in the certificate.

Statutory Authority G.S. 55B-6; 55B-12; 90-171.20(6).

.0506 FORMS

The following forms may be secured from the office of the Board of Nursing regarding professional corporations:

- (1) Regulations adopted by the North Carolina Board of Nursing relating to Professional Corporations whose purpose is providing nursing related services;
- (2) Corp. Form 1 - Certificate of Incorporator(s) and Application for a Certificate of Registration for a Professional Corporation;
- (3) Corp. Form 2 - Certificate of Registration of a Professional Corporation for the Purpose of Providing Nursing Related Services;
- (4) Corp. Form 3 - Application for Renewal of Certificate of Registration; and
- (5) Corp. Form 4 - Certificate Authorizing Transfer of Stock in Professional Corporation Organized to Provide Nursing Related Services.

Statutory Authority G.S. 55B-12; 90-171.20(6).

.0507 FEES

- (a) Initial registration fee of fifty dollars (\$50.00) is required.
- (b) Fee for renewal of Certificate of Registration is twenty-five dollars (\$25.00).
- (c) Fee for authorization for transfer of stock is five dollars (\$5.00).

Statutory Authority G.S. 55B-10; 55B-11; 55B-12.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to adopt rule cited as 25 NCAC 1A .0005 and amend rules cited as 25 NCAC 1B .0436; 1D .0509 - .0510, .0707.

The proposed effective date of this action is March 1, 1991.

The public hearing will be conducted at 9:00 a.m. on December 6, 1990 at the Personnel De-

velopment Center, 101 West Peace Street, Raleigh, North Carolina.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27603.

CHAPTER I - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1A - GENERAL PROVISIONS

.0005 COVERAGE OF TITLE 25

(a) Unless otherwise indicated by specific reference to local government employees (as defined in 25 NCAC 1A .0003), the provisions of Subchapters 1C - 1H, 1J - 1O shall apply only to applicants, employees or former employees of principal state departments (as defined in 25 NCAC 1A .0003), or a state supported institution of higher learning (as defined in 25 NCAC 1A .0003).

(b) The provisions of Subchapter 1I shall apply only to employees of local government agencies subject to G.S. Chapter 126 (as defined in 25 NCAC 1A .0003).

Statutory Authority G.S. 126-4.

SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

SECTION .0400 - APPEAL TO COMMISSION

.0436 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES

(a) Any settlement or consent agreement in a grievance or contested case which requires the approval and/or processing of personnel action forms by the Office of State Personnel must be approved by the Office of State Personnel ~~and the State Personnel Commission~~ before such personnel action forms will be processed. Approval by the Office of State Personnel shall be indicated by the signature of the State Personnel Director or his designee in an appropriate place on the settlement or consent agreement. This provision shall not be construed to require Office of State Personnel approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Personnel Commission. This provision shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for

a dismissal and to withdraw a grievance or a contested case action.

(b) The provisions of 25 NCAC 1A .0004 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from existing personnel policy. This compliance shall be in addition to the requirements of this Rule. Any settlement or consent agreement which contains a provision which requires an exception to or variance from existing personnel policy must be reviewed and approved by the State Personnel Commission prior to the processing of any personnel action forms by the Office of State Personnel.

(c) Personnel action forms, required by the provisions of any settlement or consent agreement which has not been approved by the Office of State Personnel ~~and or~~ the State Personnel Commission as required by this Rule, shall not be processed by the Office of State Personnel and shall be returned to the agency without action.

(d) Any settlement or consent agreement which does not require action by the Office of State Personnel or the State Personnel Commission does not require the approval of either body to be effective.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1D - COMPENSATION

SECTION .0500 - SEPARATION

.0509 SEVERANCE SALARY CONTINUATION

Severance salary continuation shall be paid to a state employee who is terminated as a result of reduction in force and for whom there is no foreseeable opportunity for reemployment. This policy provides for uniform application of severance salary continuation for employees who are involuntarily separated due to reduction-in-force. Payment is based on total state service supplemented by an age factor. The age factor recognizes that older employees, although protected from discrimination on the basis of age, do have a more difficult time finding new employment due to lack of transferable skills, current salary level, geographic location and other factors.

(1) Eligible Employees:

(a) A permanent full-time or part-time (20 hours or over) employee who does not obtain another permanent job in state government by the effective date of the reduction-in-force shall be eligible for severance salary continuation when sepa-

rated. Also eligible are employees with trainee appointments who have completed six months of service, and employees who attained permanent status prior to entering a trainee appointment. This shall not apply to employees whose reduction-in-force is not considered permanent; that is, employees who are reduced-in-force on a temporary or seasonal basis with the expectation that they will return to work within twelve months.

- (b) An employee who is separated at the end of time-limited permanent appointment is not eligible for severance salary continuation.
- (c) Employees who are separated on early, service, or disability retirement or with a discontinued service retirement as provided by G.S. 143-27.2 are not eligible for severance salary continuation. Employees who are eligible for early or service retirement may, if it is to their advantage, elect to delay their retirement and receive severance salary continuation for the prescribed period.
- (d) Employees who are reemployed after being terminated as a result of reduction-in-force and who have previously received severance salary continuation payments are only eligible to receive the difference between previous payments and the current eligibility.
- (e) Employees who are reemployed from any retired status with the state and who are subsequently terminated as a result of reduction-in-force shall be eligible for severance salary continuation without credit for aggregate service prior to retired status.
- (f) Permanent employees scheduled to be separated by reduction-in-force, may accept a temporary state position and remain eligible to receive severance salary continuation in accord with this policy.
- (g) A permanent employee scheduled to be separated through reduction-in-force may decline a lower level position and retain eligibility for severance salary continuation.

(2) Amount and Method of Payment:

- (a) Severance salary continuation shall be based on total state service and supplemented by an age adjustment factor as follows:
 - (i) Amount of Salary Continuation

Years of Service	Payment
Less than 1 year	2 weeks
1 but less than 5 years	1 month

5 but less than 10 years	2 months
10 but less than 20 years	3 months
20 or more years	4 months

(ii) Age Adjustment Factor

Employees qualify for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary will be added for each full year over 39 years of age not to exceed 22 years (age 61). In the event an employee is not eligible for either social security benefits or retirement benefits under the Teachers' and State Employees' Retirement System, the employee may receive credit for age beyond age 61. The total age adjustment factor payment is limited by the service payment and cannot exceed the total service payments.

Note: At age 62, a career employee is usually eligible for social security benefits as well as benefits under the Teachers' and State Employees' Retirement System both of which have been contributed to by the state.

Example: Age 63; salary - twenty-four thousand (\$24,000) dollars/year; Service - 20 years. However, the age adjustment factor cannot exceed the service factor so the age factor is limited to eight thousand dollars (\$8,000). The total payment is sixteen thousand dollars.

- (b) The amount to be paid to part-time employees will be calculated using total state service multiplied by the prorated monthly pay.
- (c) Severance salary continuation will be paid on a pay period basis and is not subject to employee or employer retirement contributions, and as a result, will not be included in computing average final compensation for retirement purposes.
- (d) Any period covered by severance salary continuation shall not be credited as a period of state service.
- (e) An employee who is reemployed in any permanent position with the state while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment. The reemploying agency shall be responsible for determining if the former employee is receiving severance salary continuation payments.
- (f) If an employee dies while receiving severance salary continuation, the balance of such payment will be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and

State Employees' Retirement System in a lump sum payment.

- (g) An employee receiving severance salary continuation is not entitled to receive unemployment compensation.
- (h) Funds for severance salary continuation will be provided as directed by the Office of State Budget. G.S. 143-27.2 provides that severance wages are authorized by the Director of the Budget, upon written request of a state agency and with recommendation by the State Personnel Director when economies in the state budget have been achieved. All severance payments are contingent upon the availability of funds. If funds are not sufficient for full payment to all employees, distribution of available funds shall be on a pro-rata basis such that all employees will receive a pro-rated payment in accordance with their age and service. In cases where the agency is not paying the full amount, the agency shall submit documentation signed by the agency head to the State Personnel Director and the State Budget Director.
- (3) For each employee who receives severance salary continuation, agencies shall show on the separation form, Form PD-105, the calculation and amount of such payment.

Statutory Authority G.S. 126-4(10); 143-27.2.

.0510 PRIORITY REEMPLOYMENT CONSIDERATION

(a) Priority reemployment consideration shall be provided to:

- (1) Employees who have met the minimum service requirements ~~for permanent status~~ and who occupy or accept and are subsequently separated, for reasons other than just cause, from positions designated exempt as confidential or policy-making pursuant to G.S. 126-5(c)(2) and G.S. 126-5(d)(1).
- (2) Employees with permanent appointments, employees and apprentices with trainee appointments who have completed six months of service, and employees who attained permanent status prior to entering a trainee appointment, who are separated due to shortage of funds or work, abolishment of a position or other material changes in duties or organization by the process commonly known as reduction-in-force. An employee who is separated at the end of a time-limited ap-

pointment is not eligible for priority consideration.

(b) In affording priority reemployment consideration, employees separated from policy-making/confidential exempt positions for reasons other than cause shall receive first priority over employees separated by reduction in force.

(c) The intent of priority consideration for employees separated from exempt positions is to enable a return to the career service at a salary grade equal to that held in the most recent subject position. For employees separated through reduction in force, the intent is to restore employment at a salary grade equal to that held prior to separation. In either instance, the salary grade and not the salary rate is the controlling factor.

Statutory Authority G.S. 126-5(c)(1); 126-5(c)(2); 126-5(d)(1).

SECTION .0700 - SALARY RANGE REVISION

.0707 EFFECTIVE DATE

(a) ~~Salary increases shall be made effective on the first day of the pay period nearest to the effective date of the salary range revision. If funds are available and there are no performance or personal conduct issues, salary increases to the minimum rate (or hiring rate, if applicable) shall be given on the effective date of the salary range revision. If funds are not available, the increase shall be given from the first available funds and made retroactive to the effective date of the salary range revision. Employees who are denied an adjustment because of poor performance or personal conduct may receive the adjustment on a current basis if/when performance becomes satisfactory or the personal conduct issue is resolved.~~

(b) Salary increases within the range are optional and, if recommended, should be given on the effective date of the salary range revision. If the desired amount of increase is not given on the effective date because of unavailable funds, equity considerations or performance, the increase(s), up to the full allowable amount, may be given at a later date(s) on a current basis. Total increases are limited to three occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent promotion, reallocation up or down, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous salary range revision.

(c) If increases are to be given at later dates, a notation must be entered on the form stating the reason the increase is being delayed and showing

the dollar amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must state "Salary Range Revision" increase in the description of action block, which will denote

that this is a delayed salary increase. If no increase is to be given at a later date, no notation is necessary.

Statutory Authority G.S. 126-4.

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

- | | |
|---|------------------------|
| 4 NCAC 3C .0201 - Establishment of Branch and Limited Svcs Facilities | ARRC Objection 7/19/90 |
| Agency Revised Rule | Obj. Removed 8/16/90 |
| 4 NCAC 3C .0202 - Branch Closing | ARRC Objection 7/19/90 |
| Agency Revised Rule | Obj. Removed 8/16/90 |
| 4 NCAC 3C .0901 - Books and Record | ARRC Objection 7/19/90 |
| Agency Revised Rule | Obj. Removed 8/16/90 |
| 4 NCAC 3C .1301 - Annual Vacation | ARRC Objection 7/19/90 |
| Agency Revised Rule | Obj. Removed 8/16/90 |

Community Assistance

- | | |
|-------------------------------|------------------------|
| 4 NCAC 19L .0501 - Definition | ARRC Objection 7/19/90 |
| Agency Revised Rule | Obj. Removed 8/16/90 |

Credit Union Division

- | | |
|--|------------------------|
| 4 NCAC 6C .0203 - Fields of Membership | ARRC Objection 8/16/90 |
| Agency Revised Rule | Obj. Removed 9/20/90 |

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

- | | |
|--|------------------------|
| 15A NCAC 18A .2117 - Water Sanitation and Quality | ARRC Objection 8/16/90 |
| Agency Revised Rule | Obj. Removed 8/23/90 |
| 15A NCAC 18A .2609 - Refrigeration: Thawing: and Preparation of Food | ARRC Objection 8/16/90 |
| Agency Revised Rule | Obj. Removed 8/23/90 |
| 15A NCAC 18C .1529 - Point-of-Entry and Other Treatment Devices | ARRC Objection 6/21/90 |
| Agency Revised Rule | Obj. Removed 7/19/90 |

Environmental Management

- | | |
|-----------------------------------|------------------------|
| 15A NCAC 2H .1203 - Public Notice | ARRC Objection 8/16/90 |
| Agency Revised Rule | Obj. Removed 9/20/90 |

Marine Fisheries

- | | |
|--|------------------------|
| 15A NCAC 3C .0311 - Cancellation | ARRC Objection 9/20/90 |
| 15A NCAC 3N .0001 - Scope and Purpose | ARRC Objection 8/16/90 |
| Agency Revised Rule | Obj. Removed 9/20/90 |
| 15A NCAC 3O .0203 - Shellfish Lease Application Processing | ARRC Objection 8/16/90 |
| Agency Revised Rule | Obj. Removed 9/20/90 |

Solid Waste Management

<i>15A NCAC 13B .1003 - Eligible Purposes</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>
<i>15A NCAC 13B .1005 - Priority Factors</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>
<i>15A NCAC 13B .1104 - General Conditions</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/23/90</i>
<i>15A NCAC 13B .1105 - Permit Required</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/23/90</i>
<i>15A NCAC 13B .1107 - Scrap Tire Collection Site Operational Reqmnts</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/23/90</i>

Wildlife Resources Commission

<i>15A NCAC 10H .0302 - Minimum Standards</i>	<i>ARRC Objection 9/20/90</i>
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HUMAN RESOURCES

AFDC

<i>10 NCAC 49C .0101 - Eligibility for Coverage</i>	<i>ARRC Objection 7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/16/90</i>

Facility Services

<i>10 NCAC 3R .2113 - Definitions</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/21/90</i>
<i>10 NCAC 3R .2115 - Need for Services</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/21/90</i>

Governor Morehead School

<i>10 NCAC 21A .0301 - Eligibility</i>	<i>ARRC Objection 7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/16/90</i>

Youth Services

<i>10 NCAC 44B .0504 - Medical Care</i>	<i>ARRC Objection 7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/16/90</i>
<i>10 NCAC 44B .0506 - Room Restriction or Confinement</i>	<i>ARRC Objection 7/19/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 8/16/90</i>

INSURANCE

Agent Services Division

<i>11 NCAC 6A .0702 - Prelicensing Education Schools</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>

Financial Evaluation Division

<i>11 NCAC 11B .0607 - Application - Employers</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Returned Rule Without Change</i>	<i>9/20/90</i>
<i>11 NCAC 11B .0610 - Application - Groups</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Returned Rule Without Change</i>	<i>9/20/90</i>

LICENSING BOARDS AND COMMISSIONS

ARRC OBJECTIONS

Pharmacy

21 NCAC 46 .1503 - Experience in Pharmacy
Agency Revised Rule

ARRC Objection 8/16/90
Obj. Removed 8/23/90

Physical Therapy

21 NCAC 48C .0102 - Responsibilities
21 NCAC 48C .0501 - Exemption for Students

ARRC Objection 9/20/90
ARRC Objection 9/20/90

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0312 - Certificate Suspension and Revocation
Agency Revised Rule
16 NCAC 6D .0105 - Use of School Day
Objection Reconsidered and Failed
Clincher Motion Passed
Agency Filed Rule for Codification in the NCAC

ARRC Objection 8/16/90
Obj. Removed 9/20/90
ARRC Objection 6/21/90
7/19/90
9/28/90

SECRETARY OF STATE

Corporations Division

18 NCAC 4 .0101 - Location and Hours	ARRC Objection 6/21/90
18 NCAC 4 .0102 - Administration and Functions	ARRC Objection 6/21/90
18 NCAC 4 .0205 - Overpayment	ARRC Objection 6/21/90
18 NCAC 4 .0206 - Documents Not Specifically Provided For	ARRC Objection 6/21/90
18 NCAC 4 .0302 - Execution	ARRC Objection 6/21/90
18 NCAC 4 .0303 - Rejection	ARRC Objection 6/21/90
18 NCAC 4 .0305 - Corrective Filings-Nonprofit Corp/Limited Partnerships	ARRC Objection 6/21/90
18 NCAC 4 .0306 - Articles of Incorporation - Nonprofit Corporations	ARRC Objection 6/21/90
18 NCAC 4 .0307 - Application For Reservation of Corporate Name	ARRC Objection 6/21/90
18 NCAC 4 .0308 - Registered Office and Registered Agent	ARRC Objection 6/21/90
18 NCAC 4 .0311 - Art of Merger/Share Exch G.S. 55-11-07/55A-42.1	ARRC Objection 6/21/90
18 NCAC 4 .0312 - Appl For Cert of Authority Foreign Prof Corporation	ARRC Objection 6/21/90
18 NCAC 4 .0313 - Filing Merger Involving Foreign Corporation	ARRC Objection 6/21/90
18 NCAC 4 .0314 - Filing Evidence of Dissolution Foreign Nonprofit Corp	ARRC Objection 6/21/90
18 NCAC 4 .0316 - Form for Annual Report	ARRC Objection 6/21/90
18 NCAC 4 .0401 - Documents	ARRC Objection 6/21/90
18 NCAC 4 .0402 - Cert of Facts/Certificate of Exit Authorization	ARRC Objection 6/21/90
18 NCAC 4 .0501 - General	ARRC Objection 6/21/90
18 NCAC 4 .0502 - Words Prohibited in Addition to Statutory Prohibitions	ARRC Objection 6/21/90
18 NCAC 4 .0503 - Deceptively Similar and Distinguishable Names	ARRC Objection 6/21/90
18 NCAC 4 .0504 - Filing Fictitious/Assumed Name Foreign Corporation	ARRC Objection 6/21/90
No Response Received From Agency	7/19/90
Response Received From Agency	Obj. Removed 8/16/90

Securities Division

18 NCAC 6 .1210 - Securities Exchgs/Auto Quotation Sys Approve/Admin	ARRC Objection 6/21/90
No Response Received From Agency	7/19/90
Response Received From Agency	Obj. Removed 8/16/90

STATE PERSONNEL

25 NCAC 1B .0107 - Personnel Commission Meetings	ARRC Objection 9/20/90
25 NCAC 1B .0108 - Commission Staff	ARRC Objection 9/20/90
25 NCAC 1B .0109 - Commission Actions	ARRC Objection 9/20/90
25 NCAC 1B .0110 - Motions	ARRC Objection 9/20/90
25 NCAC 1B .0111 - Voting	ARRC Objection 9/20/90
25 NCAC 1B .0112 - Abstention	ARRC Objection 9/20/90
25 NCAC 1B .0113 - Duties of the Chairman	ARRC Objection 9/20/90
25 NCAC 1B .0114 - Order of Business	ARRC Objection 9/20/90
25 NCAC 1B .0115 - Special Meetings	ARRC Objection 9/20/90
25 NCAC 1B .0116 - Duties of Chairman Between Meetings of the Comm	ARRC Objection 9/20/90
25 NCAC 1B .0117 - Standing Special Committees	ARRC Objection 9/20/90
25 NCAC 1B .0118 - Minutes	ARRC Objection 9/20/90
25 NCAC 1B .0119 - Notice of Commission Action	ARRC Objection 9/20/90
25 NCAC 1B .0120 - Appointment of Vice-Chairman	ARRC Objection 9/20/90
25 NCAC 1L .0201 - Purpose	ARRC Objection 9/20/90
25 NCAC 1L .0202 - Policy	ARRC Objection 9/20/90
25 NCAC 1L .0206 - Anti-Discrimination	ARRC Objection 9/20/90
Agency Revised Rule	Obj. Removed 9/21/90
25 NCAC 1L .0207 - Testing and Examination	ARRC Objection 9/20/90
Agency Revised Rule	Obj. Removed 9/21/90

STATE TREASURER

Local Government Commission

20 NCAC 3 .1003 - Petition for Hearing	ARRC Objection 9/20/90
Agency Revised Rule	Obj. Removed 9/20/90
20 NCAC 3 .1004 - Hearing Officer	
Agency Withdrew Rule	9/20/90

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHR 0296).

10 NCAC 3R .0317(g) - WITHDRAWAL OF CERTIFICATE

Michael Rivers Morgan, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Autumn Corporation, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0321 and 90 DHR 0318).

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
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